

Tax & Legal Alert

ROMANIA 14 January 2009

Amendments to the Fiscal Code Methodological norms

Contacts:

Peter de Ruiter

Partner

E-mail: Peter.deRuiter@ro.pwc.com

Mihaela Mitroi

Partner

E-mail: Mihaela.Mitroi@ro.pwc.com

Ionut Simion

Partner

E-mail: Ionut.Simion@ro.pwc.com

Daniel Anghel

Partner

E-mail: Daniel.Anghel@ro.pwc.com

PricewaterhouseCoopers Romania

Opera Center

1-5, Costache Negri Street

5th District, Bucharest

Tel: + 40212028500

Fax: + 40212028600

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The Government Decision no. 1618, dated 4 December 2008, amending and completing the Methodological norms applicable to Law no. 571/2003 regarding the Fiscal Code, was published on 22 December 2008.

The Decision introduced a series of amendments to the Methodological norms to the Fiscal Code regarding value-added tax and excise duty.

Title VI "Value-added tax"

Among the most important amendments are:

- The date until which taxable persons who are considered large tax payers can form a fiscal group has been extended to 1 January 2012.
- Taxable persons who collect the radio and TV tax on the account of public radio and television companies have to apply the VAT exemption without credit when invoicing such amounts to customers.
- One of the conditions for applying the reduced VAT rate of 5% for homes supplied as part of social policy is for the seller to obtain from the buyer a notarised declaration stating that both the buyer and spouse, if applicable, did not or do not have any housing in their name purchased with 5% VAT.
- For the other categories of buildings supplied as part of social policy as well as elders or retirement homes, orphanages, and rehabilitation and recovery centres for minors with disabilities, buildings taken over by municipalities to be rented to people with an economic disadvantage, the seller can apply the 5% VAT rate if the buyer provides a notarised

declaration stating that the building will be used as provided under the law.

- For the supply of a building together with the land it was built on, forming a single real estate unit (with a single cadastral number), the VAT treatment applied will be that applicable to the one with the higher value of the two. When the land and building have an equal value, the VAT treatment will be determined based on which of the immovable goods has the greater surface. This value is determined after an expert appraisal report.
- Land can be qualified as building land or as another type of land based on the information stated in the urban planning certificate.
- The VAT deduction right can also be based on electronically issued invoices.
- Any person who wrongly stated VAT on an invoice will pay this tax to the state budget, and the beneficiary will not be entitled to deduct this VAT if the transaction is exempt from VAT without credit.

Title VII – "Excise duty and other special taxes"

Among the most important amendments are:

- Authorised warehouse keepers for storage purposes can perform mixing operations of additives with energy products under duty-suspension arrangements.
- Energy products subject to movement control can be purchased to be used for the purposes exempted from excise duty provisions only on the basis of the end-user's authorisation and with the condition that a guarantee is provided.

- Authorisations issued to end-users may be cancelled or revoked by the authorities, under a procedure that will be determined by the president of the N.A.F.A.. The cancellation can be triggered when incorrect or incomplete information in connection with the authorisation is given. A new authorisation request may be filed six months after the date of revocation / cancellation of the authorisation.
- To purchase other energy products to be used for the purposes not subject to excise duty provisions, companies submit the liability statements to the tax authorities.
- For energy products purchased from tax warehouses located in other EU Member States, end-users authorised or registered in accordance with the previous points also have to hold authorisations for registered / unregistered traders.
- The maximum retail prices for cigarettes may also be declared by warehouse keepers authorised for storage who purchase such goods from within the EU or import them to supply on the internal market.
- Companies authorised for the production of energy products containing bio-ethanol for processing under duty-suspension arrangements and, therefore, have to amend the authorisations accordingly.
- Companies authorised to produce harmonised excisable products have to submit the operating handbook to the relevant authority. This handbook will also be requested by economic operators who intend to become authorised as producers of excisable goods. The operating handbook should contain details of operational flows and equipment efficiency.
- Companies authorised to produce excisable goods have until 31 March 2009 to complete the authorisations by registering the excisable raw materials acquired under duty-suspension arrangements. Failure to meet this deadline results in the revocation of the tax warehouse authorisation.
- Companies authorised to produce alcoholic beverages and ethyl alcohol which have not obtained the tariff classification of the products from the National Customs Authority must submit the documentation provided in the Norms by 31 January 2009. Failing to meet that deadline will result in revocation of the authorisation.
- Companies returning excisable products to manufacturers for recycling, reprocessing or destruction can obtain an excise duty refund, according to the procedure stated in the Norms.
- Companies purchasing alcoholic beverages or energy products under the direct exemption from excise duty, based on end-user authorisations, risk revocation of the authorisation and payment of excise duty if the monthly reports specified by the law are not filed.
- The excise duty exemption for energy products supplied as fuel to aircraft, other than those used for private aviation tourism, is also granted to purchasers supplying through an authorised intermediary company, as well as purchasers who invoice for the aircraft fuel to intermediary companies administering agreements with aircraft companies.
- Fuel produced entirely from biomass is exempt from excise duty. Reduced excise duties will be levied for fuels containing a minimum of 4% by volume of products obtained from biomass.
- Companies importing or performing intra-community acquisitions of goods subject to non-harmonised excise duties are not required to show the excise duty separately on the invoices issued to the buyers of these goods.

[Source: Official Gazette no. 865/22.12.2008]

For more information, please contact Peter de Ruiter, Mihaela Mitroi, Ionuț Simion or Daniel Anghel