



## Overview of the changes to the Fiscal Code Application Norms

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#### Heading I „General”

- ➔ Following the OECD Model Convention comments on Article 5 “Permanent Establishment”, the definition of such establishments has been modified.

#### Heading II „Profit Tax”

- ➔ Income and expenses from derivatives are recognised for profit tax purposes at the moment of the contract execution.
- ➔ Long-term financial investments are defined as shares in affiliates (i.e. minimum 25% holding), fund participations and investments in fixed assets.
- ➔ The tax treatment of dividend income originating from EU Member States, where the 2-year period of ownership condition is not met, has been clarified, following the Denkavit case. As a result, once the 2-year period criterion has subsequently been fulfilled, the taxpayer may benefit from the recalculation of the profit tax liability for the year in which the dividends were initially taxed and submit a rectifying profit tax return.

- ➔ Expenses incurred from value differences following the acquiring and subsequent withdrawing of own shares according to the terms of Company Law, are not deductible. The special provision for non-deductibility of expenses incurred with own shares assigned to stock option plans has been repealed.

- ➔ The non-deductibility provisions in relation to expenses incurred with management, consultancy and technical assistance services do not apply to specific occasional services provided by freelancers and legal persons, maintenance and repairing the assets, postal services, communication services, parking services and transportation).

- ➔ For profit tax calculation purposes, the rules for limited deductibility of expenses are applied quarterly or as per the methodological norms, so as to meet the legal requirements at year-end. For taxpayers who have the obligation to pay profit tax yearly, the rules for limited deductibility are applied yearly.

- ➔ Interest and exchange rate differences for bonds listed at a regulated stock exchange can be expensed for tax purposes.

- ➔ As of 1 January 2007, the interest rate limit for foreign currency denominated loans considered for interest expense deductibility is increased from 6% to 7%.
- ➔ Investments in fixed assets for which no ownership right exists but fiscal depreciation is allowed are those investments in fixed assets leased, rented or under lease management. Taxpayers may choose to base the calculation of the fiscal depreciation of the corresponding expenses on either the initial contract period (regardless of whether the period is subsequently prolonged) or on the remaining usable period of the assets.
- ➔ The fiscal value of land plots, as well as the remaining undepreciated fiscal value of depreciable fixed assets, will include the remaining undepreciated value of both revaluations conducted between 1 January 2004 and 31 December 2006, and as of 1 January 2007.
- ➔ Losses of value due to revaluations accounted for after 31 December 2003 will decrease the revaluation reserves. The fiscal value of land plots and the remaining undepreciated value of depreciable fixed assets are recalculated accordingly.
- ➔ The portion of a revaluation made after 2003 that restores the loss of value caused by tax depreciation must be included in the tax base in the period the revaluation takes place.
- ➔ Upon the liquidation of a corporate taxpayer, the fiscal loss recorded in the tax return of the previous year may be offset against the taxable income derived from the liquidation process.
- ➔ If the required documentation becomes available after filing the year-end tax return, taxpayers can benefit of fiscal credit by way of submitting a rectifying return.

- ➔ Quarterly profit tax advance payments due by newly incorporated taxpayers or those which incurred fiscal losses in the previous year are based on the current year accounting profits. When establishing such advance payments, no fiscal adjustments are made to the accounting profits.

### Heading III "Individual income tax"

#### Salaried income

- ➔ Child-raising incentive payments and monthly benefits for surviving spouses are not taxable.
- ➔ Amounts paid by employers during non-competition periods according to employment contracts are, from 2007, to be treated as salary income and taxed as such. The same fiscal treatment applies to amounts paid by employers throughout any suspension of employment agreements for the purposes of allowing attendance of courses and professional development training which impose the total unavailability for tasks.
- ➔ Contributions made by employers to optional occupational pension schemes capped at EUR 200 per participant are not taxable.
- ➔ Employers are obliged to provide employees with a copy of the annual fiscal statement, no later than the last day of February, for the preceding year.

#### Income from independent activities

- ➔ Income derived by probationer lawyers and practicing lawyers is treated as income derived from independent activities.
- ➔ Income derived by individuals from 5 or more rental agreements is to be treated, from the beginning of the next fiscal year, as income from independent activities, meaning that they do not benefit from the standard 25% deduction.

#### Income from investments

- ➔ The scope of the definition of income derived from forward and

similar transactions of the sale and the purchase of foreign currency is broadened to include the swap / option on the exchange rate / interest rate.

- ➔ As of January 2007, in case of transactions with payment in installments, with shares in unlisted companies and with participation titles, closed until 31 December 2006, the tax rate for 2006 is still applicable in 2007.
- ➔ As of January 2007, in case of transactions with shares in unlisted companies and with participation titles, the capital gain tax due must ultimately be paid upon submission of the ownership transfer documentation for registration, irrespective whether they are sold against immediate payment or the payment is made in installments.
- ➔ If the buyer of shares in an unlisted Romanian company is a foreign company and the seller is a resident individual, the obligation to pay the capital gain tax for the account of the vendor is on the buyer of the shares, which has to appoint a fiscal representative or fiscal agent in Romania for this purpose.
- ➔ In order to benefit from favorable Double Tax Treaty rules, foreigners deriving income from shares in a Romanian company must provide a fiscal residency certificate to the fiscal representative / fiscal agent, or to the broker, in case of listed shares.
- ➔ From 1 January 2007, individuals resident in the European Union are exonerated from paying tax on interest from current and deposit accounts (on the condition that they can prove residency), regardless of whether the deposit is made before or after 1 January 2007.

#### Sundry income

- ➔ Rental income received in foreign currency is taken into account for tax purposes using the official National Bank of Romania exchange rate valid on the last day of the month of receipt.
- ➔ Prize income also includes income generated as a result of promoting

products or services through advertising. The gains are defined as those awarded to gaming participants by any legal entity authorised to exploit such gambling activities.

- ➔ Gift vouchers awarded outside employment relationships are treated as income derived from other sources (whereby the company must withhold the income tax due).

#### Heading IV „Taxation of micro-companies”

- ➔ Micro-companies become retroactively liable for profit tax if they exceed certain criteria, namely, if more than 50% of their income is derived from consultancy and management services or if the total income surpasses the limit of EUR 100.000. The profit tax due represents the difference between the profit calculated at the end of the reporting period and the micro-company’s income tax calculated during that year.

#### Heading V „Taxation of income derived from Romania by non-residents and the taxation of representative offices”

- ➔ In cases where the payment concerning transactions which allow for the electronic downloading of digital products is made for the purposes of awarding the rights to use the copyright, this is to be deemed as a royalty payment.
- ➔ For payments made according to Directive 2003/49/EC, regarding the similar taxation of the interest and royalties between related parties, and where the condition requiring the ownership for a minimum period of two years is not fulfilled, the reduced quota for the income of non-residents / tax exemption is not to be applied. In cases where fulfilment of the criterion after the payment date is subsequently proven, the tax paid is to be refunded.
- ➔ For fiscal purposes, the extension of fixed-term

deposits, or other saving instruments, is regarded as constituting a new deposit.

- ➔ Clarifications are made regarding entities which must declare and pay capital gain tax for the transfer of shares in limited liability and joint stock companies.
- ➔ The shares of non-resident legal entities in closed end investment funds are taxed similar to joint ventures.

#### Heading VI “Value Added Tax” (VAT)

##### Intra-community trade

- ➔ Under several orders issued by the Minister of Public Finance, simplification measures are introduced for consignment stocks, call-off stocks, goods sent for trial and conformity check and goods sent for processing. The orders detail the cases and conditions when suppliers are not required to register for VAT purposes by applying the simplification measures.
- ➔ The documents required for applying VAT exemption for intra-community supply of goods are specified.
- ➔ Special documents are required for VAT exemption of intra-community supply of new means of transportation or excisable goods for buyers who are individuals or entities not registered for VAT purposes in the Member State of destination.
- ➔ For the movement of goods from Romania to other Member States, the VAT exemption is substantiated by the following documents:
  - the self-invoice, which must contain the VAT registration number of the company in the Member State of destination of the goods;
  - the substantiating document proving transportation of goods from Romania to another Member State.
- ➔ By Order of the Minister of Public Finance, the concept of VAT warehouse is introduced and the methodology establishing the requirements and procedures for

authorising VAT warehouses are approved. Persons seeking such authorisation have to submit a request to the relevant tax authorities, which must contain certain specified information.

##### Non-EU trade (import / export of goods)

- ➔ From a VAT perspective, the importer of goods can be either the owner or the purchaser of the goods.
- ➔ The owner of the goods must be the importer of the goods, from a VAT perspective, in the following cases:
  - goods imported into Romania for leasing operations;
  - goods to be installed or assembled in Romania by the supplier.
- ➔ The requirements and documents based on which the VAT exemption applies are specified for the import of:
  - samples with negligible value,
  - printed materials and advertising materials,
  - goods imported for examination, analysis, testing and
  - goods of which statistical value does not exceed EUR 10.

##### Registration for VAT purposes

- ➔ Companies not registered for VAT purposes that perform intra-community acquisitions exceeding EUR 10,000 have to register for VAT purposes. The VAT registration procedure, as well as the procedure and the period allowed for the issuance of the VAT registration number by the tax authorities are defined.
- ➔ Persons established in the EU can opt for the direct VAT registration procedure or appoint a fiscal VAT representative. Non-EU persons can only register by appointing a fiscal VAT representative. The procedures to be followed are detailed.
- ➔ If a foreign company has more than one tax presence in Romania it should be registered with only one VAT number.

- ➔ Foreign companies performing so called distance sales in Romania must register for VAT purposes when their sales exceed EUR 35,000 in a calendar year.

### Taxable operations

- ➔ The VAT treatment of software programmes has changed. The supply of standard software on a floppy disk, and the granting of the licence which allows installation on a specific number of working units, is deemed a supply of goods, whereas the supply of software which allows installation on an unlimited number of working units, as well as the supply of standard software via the internet and the supply of customised software, is deemed a supply of services.
- ➔ The transfer for consideration of an athlete from one club to another is subject to VAT.
- ➔ An individual who on a continuous basis obtains incomes from selling real estate must register for VAT purposes.
- ➔ A taxable person paying on behalf of a third party the goods or services supplied to that third party is deemed as purchaser-reseller provided that the related invoices are received in its own name.
- ➔ The conditions under which major tax payers can choose to form a single fiscal group have been established.

### Exemptions

- ➔ VAT exemption is available for the supply of goods and services to diplomatic missions and consulate offices, representative offices of international and inter-governmental organisations accredited in Romania. VAT exemption certificates issued before 1 January 2007 are still valid.
- ➔ Companies which implicitly opted to tax the rental of real

estate before 1 January 2007 and choose to maintain this taxation regime are required to notify the tax authorities within 90 days from 1 January 2007.

### New Invoicing system

- ➔ Until 1 March 2007, invoices should have been issued in Romanian. As of 2 March 2007, invoices can be issued in any official EU Member State language. However, when so requested by the tax authorities, Romanian translations of the invoices must be provided.
- ➔ Invoices can be denominated in hard currency. However the VAT amount must be mentioned in RON as well.
- ➔ Invoices must be issued in at least two copies.
- ➔ As of 2 March 2007 if an invoice is issued following purchases in cash against a fiscal receipt, the goods and services obtained need not be specified on the invoice if the invoice refers to the fiscal receipt.
- ➔ The conditions to be fulfilled for the conveyance by electronic means of invoices, for electronic invoice archiving and for invoice issuance by a third party, are established.
- ➔ The available pre-printed invoices can be also used after 1 January 2007. However, attention should be paid to the fact that such invoices may not include certain data required by law. Supplementing this data is essential for input VAT recovery purposes.
- ➔ The guidance models for sale ledgers and purchase ledgers, as well as for the non-transfer and arrival of goods registers have been published.
- ➔ Taxable persons registered for VAT purposes are required to submit each semester a list of invoices issued for the supply of goods and services within Romania. This list is to be sent to the tax authorities in electronic format by the 25<sup>th</sup> of the month following each semester.

### VAT reimbursement to non-resident companies

- ➔ The procedure is established for VAT reimbursement for acquisitions of movable goods and services made in Romania by taxable persons established in other Member States or outside the EU.
- ➔ VAT payers, registered abroad cannot recover Romanian input VAT if:
  - they are involved in an activity that for a Romanian company would not give recovery entitlement in Romania.
  - the supply of goods or services is exempted under the Romanian law.

### Heading VII. Excise

#### I. Harmonised excise duties

##### Authorisation

- ➔ Companies that manufacture, sell or use energy products, which become excisable because of their being used as engine or heating fuel must file a request with the Ministry of Public Finance on classifying such products for excise purposes. The request must be accompanied by certain documents as provided by the law.
- ➔ Companies purchasing from within the EU ethyl alcohol or energy products to be used in the production process are to be authorised as registered / non-registered operators so as not to pay excise duties.
- ➔ Authorised operators in the field of electricity are required to register with the central tax authority as operators of excisable products.
- ➔ From 2 March 2007, companies which purchase energy products subject only to the control and movement provisions, for using them for purposes other than as motor and heating fuel, have to request an end-user authorisation from the local tax authorities. Alternatively, companies which purchase energy products other than the aforementioned to be used for the same purposes, are

required to file a statement of their own liability regarding the destination of such products.

- ➔ From 2 March 2007, the production and / or storage of flavorings with an alcohol concentration exceeding 1,2% in volume, can be undertaken only in a tax warehouse.
- ➔ Quantitative limitations are stipulated for becoming authorised as storage tax warehouses. For instance:
  - beer – 150,000 litres;
  - wine and fermented beverages – 150,000 litres;
  - alcoholic beverages in general – 30,000 litres of pure alcohol;
  - cigarettes – a quantity for which the value based on the maximum retail selling price must not be lower than EUR 2,500,000;
  - energy products – 2,500,000 kg; this quantity is not compulsory for storage tax warehouses intended only for supplying aircrafts, ships and watercraft;
  - from 2 March 2007, flavorings, extracts and alcohol concentrates – 1.500 litres of pure alcohol.
- ➔ The request for becoming authorised as a production tax warehouse must be accompanied by an operational handbook describing the production process.
- ➔ The regulatory authorisation procedure for registered / non-registered traders, as well as the necessary documentation for issuance of this authorisation, is defined. Authorisation for non-registered traders is issued for each transaction.
- ➔ The procedure for authorisation as a tax representative for excise duty purposes is defined.

#### Guarantees

- ➔ Authorised tax warehouse keepers are required to submit a 6% guarantee or, from 2 March 2007, an 8.33%

guarantee (in the case of processed tobacco) on the value of excise duties levied on the average annual output of excisable products from the tax warehouse over the last 3 years.

- ➔ The guarantee may be reduced, if certain conditions are satisfied.
  - ➔ Upon authorisation, registered traders are required to submit a 6% guarantee or, from 2 March 2007, an 8.33% guarantee (in the case of processed tobacco) on the value of excise duties applied to products purchased in the last year.
  - ➔ For new tax warehouse keepers or new registered traders, the guarantee required will equate to 6% or, from 2 March 2007, 8.33%, in the case of processed tobacco, of the estimated amount of excise duties related to products purchased / processed during one year.
  - ➔ From 2 March 2007, any authorised importer is required to submit a guarantee, equivalent to 6% or 8.33% (in case of processed tobacco), of the amount of excise duties related to the products imported the previous year.
  - ➔ In the case of a newly authorised importer, the guarantee will be equivalent to 6% or 8.33% (in case of processed tobacco) of the amount of excise duties due for the products estimated to be imported during one year.

- ➔ Authorised tax warehouse keepers must also submit a 2.5% guarantee on the value of the excise duties for the quantities of excisable products dispatched under suspension arrangements to other member states in the previous year. This guarantee is deemed as submitted if the amount of the required guarantee is less than the amount of the guarantee for production / storage already submitted.

#### Exemptions

- ➔ Significant changes have been made to the procedures for granting excise duty exemptions

for energy products, for ethyl alcohol and alcoholic products.

- ➔ A limit of 200,000 cigarettes / semester has been set for applying the excise duty exemption for cigarettes sent for testing.

#### Marking excisable products

- ➔ When purchasing tobacco products and alcoholic beverages from other member states, duty stamps purchased by registered / non-registered traders must be conveyed to the production tax warehouse which will then apply them to the products.
- ➔ For the quantity of requested stamps to be approved, the guarantee submitted upon authorisation must cover the amount of excise duties relating to the products for which the stamps are requested. Otherwise, an additional guarantee is required.
- ➔ The maximum allowed percentage of stamps that can be destroyed during the production process, and which cannot be recovered in order to be accounted for, decreases from 1.5% to 0.5% of the total number of used stamps.
- ➔ Operators with the right to mark tobacco products will have their marking right suspended if they fail to take, within 30 days of the issuance of the official notice, the quantities of seized tobacco that they are required to destroy.

#### Other provisions

- ➔ Registered and non-registered traders are also required to release the maximum retail selling prices for cigarettes.
- ➔ The procedure for reimbursing excise duties on alcoholic beverages and tobacco products returned to production tax warehouses for recycling, reconditioning or destroying is specified.
- ➔ The procedure, from 2 March 2007, for the reimbursement of excise duties on flavorings, extracts and alcohol concentrates acquired from suppliers within the EU is specified.

➔ For excisable products released for consumption in Romania, but subsequently destined for consumption in another member state, the procedure for excise duty reimbursement is stipulated.

➔ The obligation to use a special invoice format for cigarettes supplied by production tax warehouse keepers or by authorised importers is removed.

### I. Non-harmonised excise duties

#### Excise duty payers

➔ The authorisation procedure for companies that purchase products subject to non-harmonised excise duties from other EU member states is detailed.

➔ From 2 March 2007, any company that wishes to be authorised for the intra-community acquisition of products subject to non-harmonised excise duties, is required to submit a 3% guarantee on the value of excise duties due for the products acquired during the previous year.

➔ For new companies, the 3% guarantee will be calculated based on an estimate of the quantity of products that will be purchased during one year.

### III. Special registration tax

➔ Motor cars and commercial vehicles with a total authorised mass of up to and including 3.5 tones are liable for a special registration tax due when they are first registered in Romania.

➔ For motor cars and off-road vehicles that are first registered in Romania after 1 January 2007, and on which the excise duties were paid upon import or purchase from the domestic market in 2006, the special registration tax is not due.

➔ For motor cars brought to Romania under leasing contracts entered into before 1

January 2007 and due to terminate after this date, the excise duties applicable when the leasing contracts were concluded are due to the state budget instead of the special registration tax.

### IV. Transitional measures

➔ The end-user authorisations issued in 2006 for direct excise duty exemptions previously valid until 31 December 2006 remain valid until 1 March 2007, subject to a quantitative limitation equal to two months of the total approved quantity in the authorisation.

➔ Companies benefiting from direct exemptions which, between 1 January 2007 and the date of obtaining the end-user authorisation, purchased energy products with excise duties can reclaim such duties.

➔ Companies which, after 1 January 2007, purchased energy products with excise duties and further supplied these products without charging excise to beneficiaries who had not at that time obtained their end-user authorisations can benefit from the reimbursement of the excise duties paid.

➔ The accompanying administrative documents, stocked, as of 1 January 2007, by authorised warehouse keepers, can be used until exhausted, but only for domestic supplies of excisable goods under suspension arrangements.

➔ All authorised warehouse keepers and authorised importers holding authorisations valid after 1 January 2007 are obliged to inform, by 31 March 2007, the proper tax authorities of the level of the guarantee and the elements used for its calculation.

➔ Duty stamps purchased from the National Printing House by authorised warehouse keepers and authorised importers prior 1 January 2007 may be used until stocks are exhausted, but until no later than 30 June 2007.

### Heading IX „Local tax”

➔ Buildings which were treated until 1 January 2007 as being similar to “*special constructions*” for which building tax was not due, and which as of 1 January don’t have the constitutive elements of a building, are exempted from building tax. This provision is applicable until such transformations occur that would make the tax as deemed.

➔ For companies observing accounting rules harmonised with the CEE 4<sup>th</sup> Directive and International Accounting Standards, building tax is due based on the gross book value of the building.

➔ The method of calculating buildings tax is clarified and depends on the acquisition date of the building property right.

➔ For assets which are the subject of financial leasing agreements concluded prior to 31 December 2006, the user is liable for building tax, land tax or vehicle tax, as appropriate, and is obliged to submit a fiscal statement and a copy of the lease agreement by 31 January 2007. For financial leasing agreements concluded after 1 January 2007, the statement submission date is 30 days after the conclusion date of the lease agreement.

➔ Investments in excess of EUR 500.000, for which incentives on building and land taxes can be granted by local authorities, are required to derive profits from incorporation of a new entity, the expansion of an existing one or the commencement / development of a different line of business leading to changes in the product or product manufacturing process.

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Further information regarding changes to the Fiscal Code application norms can be obtained from Mihaela Mitroi, Rene Bijvoet and Peter de Ruiter

