

Tax & Legal Alert

ROMANIA 14 February 2008

Changes to the Norms to the Fiscal Code

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Government Decision No. 1.579/2007 amends and completes the Methodology Provisions on the applicability of law No. 571/2003 regarding the Fiscal Code in force from 1 January 2008.

Significant amendments are made to:

Title I "General Provisions"

Contracts concluded between Romanian entities and non-residents which refer to services rendered outside Romania do not have to be registered with the authorities.

Title II "Profit tax"

The most important changes are:

Revenues and expenses from the late evaluation of derivatives registered according to accounting standards are considered in the profit tax computation.

The following expenses are considered tax deductible:

- technological losses within the company's consumption norms regarding the manufacturing of a product or rendering of a service
- expenses incurred from transportation of personnel to and from the workplace
- expenses from transportation and accommodation in Romania and foreign countries of people deemed as administrators or employees, meaning directors acting according to a mandate and resident and / or non-resident secondees, provided the Romanian company bears the legal rights pertaining to the individual.

Expenses incurred by the employer representing differences between the market price and the preferential purchase price of shares for transactions included in stock option plans are considered non-deductible expenses.

In order to be admitted as tax deductible expenses, services must be rendered based on written contracts or any other contractual forms accepted by the law.

It is no longer required for companies to reduce the legal reserve down to the level specified by the legislation if, as a result of a reorganisation, it exceeds 20% of share capital or patrimony.

It is stated that qualifying dividends distributed and paid to Romanian companies after 1 January 2007, even if they originate from undistributed profits from periods prior to 2007, are considered non-taxable dividends if the conditions stipulated in the Fiscal Code are met.

Title V "Taxation of income derived from Romania by non-residents and the taxation of representative offices"

Qualifying dividends distributed and paid to EU companies after 1 January 2007, even if they originate from undistributed profits from periods prior to 2007, are considered non-taxable dividends if the conditions stipulated in the Fiscal Code are met.

The possibility of providing a copy of the fiscal residence certificate to the income payer for applying the DTT provisions is mentioned. The copy has to be translated into Romanian and notarised.

Title VI “The Value Added Tax”

The most important changes include:

Real-estate transactions

Transitory measures have been implemented for the applicability of simplification measures for on-going contracts concluded before 1 January 2008 for the supply of buildings, land and construction-assembly works.

Thus, 19% VAT is applied for the value of the payments transferred or invoices issued after 31 December 2007.

The late submission of the notification of opting for taxation for sale, rent and real-estate leasing operations does not revoke the right of the landlord / supplier to apply 19% VAT.

For leasing contracts where the option to buy the goods is exercised before 12 consecutive months have passed from the beginning of the contract, it is considered that no leasing operation has been carried out but rather a delivery of goods from the day the goods are put at the disposal of the beneficiary. Moreover, for leasing contracts concerning immovable goods for which the VAT exemption regime has been applied, the supplier cannot opt for taxation when selling the immovable property.

Transitory measures have been implemented for capital goods that are not entirely used for operations that allow VAT deduction right and for which an adjustment of 5 or 20 years respectively was applied in 2007. The new amendments imply that the VAT adjustment related to these capital goods must be performed one-off for the remaining value, with this adjustment being registered in the VAT return for December 2008.

Financial / banking and insurance services

The new amendments brought important clarifications concerning the application of the VAT exemption both for financial / banking operations, as well as for insurance operations. The most important European Court of Justice Cases regarding financial services have been implemented through the new regulations.

The most important include:

Outsourced financial services may benefit from the VAT exemption if they fulfil the specific and essential characteristics of VAT exempt financial services.

The taxable base for factoring operations is the counter value of the service, including the interest, and is determined by the type of the contract.

The VAT exemption is also applied for management of mandatory and optional private pension funds, management of investment trust companies, as well as for claim guarantee pools.

The exemption can only be applied for insurance services if a contractual relationship exists between the supplier and the service beneficiary, with the supplier bearing the insurance risk.

Transfer of a going concern

The transfer of a part of a company's assets that are invested in an activity which, from a technical perspective, forms an independent structure and is able to conduct separate economic activities is not subject to VAT.

Import VAT

For supplies of imported goods with installation in Romania, from a VAT perspective the importer is the goods supplier. However, the beneficiary can also be the importer from a VAT perspective, if the contractual agreement between parties for the transaction provides for such an obligation.

The VAT for goods placed in suspensive customs regimes is no longer required to be guaranteed. However, the VAT needs to be guaranteed for goods placed in certain customs regimes, such as temporary admission with partial relief from customs duties, processing under customs control and inward processing relief without suspension of import right payments.

Stolen goods

Companies are not required to self-charge VAT for stolen goods for which the police can provide evidence of the theft, evidence that then has to be accepted by the insurance company.

Work on movable tangible property

The new amendments bring clarifications regarding expertise services performed on movable tangible goods. Thus, the new provisions mention that expertise services performed on movable tangible goods include the examination of certain goods in order to establish their value.

The printing of books or other items can be considered as:

- a supply of goods if the typography uses its own resources;
- a supply of services if the beneficiary makes the necessary resources available for the typography.

Base of taxation

The transport expenses ancillary to an intra-community acquisition or supply of goods are included in the taxable amount for VAT purposes only for the transport or that part of the transport that is the supplier's responsibility.

Companies benefiting from price subsidies from the state budget, local budgets or from the Community budget have to charge VAT on the date the subsidies are cashed.

A company receiving an invoice on its own name and / or invoicing further the same operations to another client, is not liable to include in its object of activity such recharged operations.

The following are not subject to VAT, regardless of the person issuing the invoice: taxes for advertising and publicity services, hotel tax, the Cinematographic fund contribution, tax on health damaging activities.

Intra-community operations

The invoices for advance payments received / paid while performing intra-community acquisitions / supplies of goods have to be included in VAT reports.

Clarifications regarding triangulation operations have been introduced. Thus, if Romania is the third member state, the buyer-reseller is not liable to register for VAT purposes in Romania, provided they are not established in Romania and not registered in the first member state from which the goods are dispatched.

The VAT refund for companies established outside the European Union

In order for companies established outside the European Union and not registered in Romania to benefit from the VAT refund, a reciprocity agreement is required between Romania and the residence country of that company.

Names of such signatory countries are to be published on the official web site of the Ministry of Economy and Finance.

The right of deduction for VAT

If the justifying documents are incomplete or incorrect, the fiscal authorities will allow the VAT deduction provided these documents are corrected during the tax inspection.

The VAT initially deducted for capital goods has to be adjusted if the goods are in the adjustment period (5 years for fixed assets and 20 years for immovable goods) and if these capital goods have been acquired, produced, modernised or transformed after the EU accession date, irrespective of whether the normal use period has expired or not.

Title VII “Excises and other special taxes”

Some of the most important modifications regarding the regime of excises are:

- Companies selling or transporting raw tobacco and partly-processed tobacco have to obtain authorisation from the tax authorities to perform these activities. The authorisation procedure is to be established by an Order of the President of the National Agency of Fiscal Administration.
- Until 30 April 2008, authorised warehouse keepers for the production of ethylic alcohol and alcoholic beverages are required to obtain the customs tariff classification of the products from the National Customs Authority. Consequently, they should submit a list of the product types to be made in the tax warehouse,
- as well as their detailed composition. This obligation also applies to companies wishing to be registered as authorised warehouse keepers for the production of ethylic alcohol and alcoholic beverages.
- There are now no terms of validity for tax warehouse authorisations for production purposes / storage and for registered trader authorisations.
- Companies authorised as tax warehouse keepers for production purposes issued for places used as energy products storage warehouses can change them, on demand, into tax warehouse authorisations for storage purposes.
- Floating tanks intended for storage of energy products within harbours for the supply of ships, can be authorised as tax warehouses for storage purposes. The requirements for strict delimitation and enclosure are not applicable in this case.
- The level of guarantees ensured by the authorised warehousekeepers / registered traders will be analysed by the territorial tax authorities every six months, and not on a yearly basis, as previously.
- The new model of final user authorisation does not specify the supplier. Thus, there is no need to obtain a separate authorisation for each supplier, as was the case until now.
- The company's obligation to guarantee the payment of excises while requesting the final user authorisation for ethylic alcohol and other alcoholic products has been cancelled.
- The total exemption of excise payments is no longer valid for fuel produced from biomass. In addition, the reduced excises are no longer applied for diesel oil containing at least 2% of biomass-derived products.
- The procedure of excises reimbursement for companies exporting or supplying to another Member State has been approved:

- coffee assortments obtained as a result of own processing of coffee purchased directly from other Member States or obtained from imports;
- certain products subject to non-harmonised excise duties (natural furs, crystal articles, gold and / or platinum jewellery, perfumery products, etc.) and exported or delivered to other Member States without being changed.

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