

Amendments to the Romanian Fiscal Code

Government Emergency Ordinance no. 127/2008 ("GEO 91/2008"), amending the Fiscal Code, was published in Official Journal no. 705 of 16 October 2008.

The amendments come into force, generally, as of 1 January 2009.

Title I "General provisions"

As per the provisions of GEO 127/2008, the non-resident is defined as "any foreign legal entity, any foreign individual and any other foreign un-incorporated entities, including undertakings for collective investments in securities, which are not registered in Romania, according to the law".

According to GEO 127/2008, income derived from Romania will include as of 1 January 2009 income from transfer of participation titles, as defined at article 7 paragraph (1) point 31), held in a Romanian legal entity or a legal entity holding directly or indirectly the majority of its assets in Romanian real estate, as well as any income obtained from transfer of securities (as they are defined at art. 65 paragraph (1) letter c) issued by Romanian residents).

Title II "Corporate income tax"

From 1 January 2009 until 31 December 2009, income obtained from trading participation titles on an authorized market, supervised by the National Securities Commission, is not subject to corporate income tax. For the same period, the expenses representing the book value of such participation titles or/and the expenses incurred with trading operations would be non-deductible for corporate income tax purposes.

According to GEO 127/2008, the threshold for deductibility of expenses is amended as follows:

- contributions paid by the company on behalf of an employee to optional occupational pension schemes: within the limit of the RON equivalent of EUR 400 during a fiscal year, per each participant;
- expenses with private health insurance premiums: within the limit of the RON equivalent of EUR 250 during a fiscal year, per each participant

Title III "Income tax"

Freelancers will be able to deduct expenses with private pensions and voluntary health insurance within the same limits set for Corporate income tax (i.e., EUR 400 / EUR 250 per year).

For salary tax purposes the annual amount deducted from the gross revenues obtained by the individual as contribution to optional occupational pension funds shall not exceed the RON equivalent of EUR 400 per year.

According to the provisions of GEO 127/2008, net annual losses resulted when offsetting the losses incurred from trading securities, other than shares and securities held in close-ended entities, with similar transaction gains, can be carried forward in the next year. By exception, the annual loss incurred in 2009 cannot be carried forward in 2010.

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From 1 January 2009 until 31 December 2009, gains realized by individuals from trading securities, other than shares and securities held in close-ended entities, shall be exempt from income tax. Starting 2010, the regular taxation regime will be reinstated, as currently applicable in 2008.

Title V “Withholding tax”

According to GEO 127/2008, income obtained by non-residents from a partnership with Romanian micro-enterprises shall be subject to taxation as provided by Title IV “Tax on micro-enterprises income”.

As provided by the amendments to the Romanian Fiscal Code, the following are treated as non-taxable income in Romania:

- income obtained by non-resident collective investments bodies without legal personality from trading participation titles or securities held directly or indirectly in a Romanian legal entity;
- income obtained by non-residents from Romania from trading derivatives as defined by the law;
- income obtained by non-residents from Romania from trading participations in Romanian companies or securities issued by Romanian residents on foreign markets.

Title VI “Value added tax”

GEO 127/2008 also sets an explicit deadline for filling the special VAT return in the case of intra-community acquisition of new means of transport. This needs to be submitted not later than 25th of the month following the month of bringing the goods in Romania. This amendment becomes effective as of 1 November 2008.

Title VIII “Special measures regarding control of production, import and circulation of certain excisable products”

Economic operators that intend to trade energetic products (as described at art. 175 paragraph (3) letter a) – e)), under the en detail system, are obliged to register with the Fiscal authorities according to the procedures and under the conditions that are to be established by an order issued by the president of the National Agency of Fiscal Administration (“ANAF”). Failure to fulfill the conditions stipulated in the above mentioned order triggers a fine ranging between RON 20.000 and RON 100.000 and also sequestration of the amounts resulted from performance of such activities.

Economic operators that perform trading activities with energetic products (as described at art. 175 paragraph (3) letter a) – e)), under the en detail system, are obliged to fulfill the procedural requirements stipulated in the future order that is to be issued by the president of ANAF within 90 days from publication of the order in the Romanian Official Journal, part I. Failure to fulfill the above mentioned procedural requirements triggers a fine ranging between RON 20.000 and RON 100.000, sequestration of the amounts resulted from performance of such activities, as well as cancellation of the right to perform such activities for a period of 1 to 3 months.

These amendments to the Romanian Fiscal Code become effective starting 1 November 2008.

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Title IX "Local taxes"

Building tax and land tax shall be reduced by 50% for buildings and related land held by legal entities, if used exclusively for the supply of tourist services for a period of not more than 6 months during a calendar year.

According to GEO 127/2008, the extra-judicial stamps duties are considered as revenues to the local budget (less expenses incurred with distribution of fiscal stamps). This amendment to the Romanian Fiscal Code becomes effective as of 16 October 2008.

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