

December 2011



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Amendments and completions brought to the Fiscal Code

(Emergency Ordinance no. 125 / 2011 for the amendment and completion of Law no. 571/2003 regarding the Fiscal Code, published in the Official Gazette no. 938 of 30 December 2011)

Amendments regarding the fiscal treatment applicable for the acquisition of vehicles and fuel

- ❖ From a corporate income tax perspective, expenses with fuel for vehicles owned or used by the taxpayer, are tax deductible in the limit of 50%
 - ❖ From a VAT perspective, the VAT related to the acquisition of vehicles and fuel for vehicles owned or used by the taxpayer can be deducted in the limit of 50%
 - ❖ The use in own interest or by the company's employees, of goods whose acquisition was subject to the 50% VAT deductibility limitation (e.g. vehicles), is no longer a deemed provision of services under article 129, paragraph (4)
 - ❖ From an individual income tax perspective, 50% of the cost of fuel for vehicles can be deducted when determining the annual net income from freelancing activities
 - ❖ The above mentioned provisions apply to motorized road vehicles intended exclusively for the carriage of passengers, with a maximum authorized weight that should not exceed 3,500 kg and which should not have more than 9 passenger seats, including driver's seat
 - ❖ The above mentioned provisions do not apply to certain vehicles like those exclusively used for interventions, repairs, security, courier services, sale, transport of passengers with payment and others specifically mentioned
- ### Provisions regarding the fiscal rights and obligations of dormant taxpayers
- ❖ Taxpayers declared dormant, which undertake economic activities, are subject to the payment of taxes but do not have the right to deduct the expenses and the value added tax incurred for the acquisitions made

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Specific provisions regarding the taxpayers who will apply the accounting regulation consistent with the International Financial Reporting Standards (IFRS)

❖ Specific provisions are introduced for the taxpayers who will apply IFRS, mainly in respect of determining the fiscal value and the corporate income tax base (e.g. the tax treatment of provisions, specific non taxable revenues, specific nondeductible expenses)

❖ As concerns local taxes, in case of buildings owned by legal entities applying IFRS and choose to apply as subsequent valuation method the cost based model, the taxable base, subject to local taxes, is the value resulted from the valuation report performed by an authorized valuator, submitted to the local public administration

Corporate income tax

❖ Positive differences resulted from the valuation of shares and of long term bonds are subject to corporate income tax

❖ Negative differences related to shares and long term bonds are excluded from the nondeductible expenses provided by the Fiscal Code

❖ The carrying fiscal value, for fixed assets/ intangibles for which components are replaced, should be recalculated by subtracting the carrying fiscal value of the replaced components and by adding the fiscal value of the new components. In case of replacing components to a fully depreciated fixed assets a new useful life would need to be set by a technical commission or an independent technical expert

❖ Expenses incurred with remunerating employees with equity instruments which are settled in cash represent tax deductible expenses if are taxed at employee level as per Title III "Individual income tax" while expenses incurred with remunerating employees with equity instruments which are settled in kind represent non-deductible expenses as long as those are not taxed at employee level as per Title III

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Income tax

❖ The nomenclature of activities, for which the net income can be determined based on the annual income norms, is developed by the Ministry of Public Finances (before it was developed by the local Direction of Public Finances); in this respect, Order no.2,875/2011 approves the list of the respective activities (narrower than the previous one)

❖ Taxpayers for which the net income is determined based on income norms and which have registered an annual gross income of more than the equivalent in lei of 100,000 EUR, are required to determine the net income on a real basis starting with the next fiscal year

❖ Revenues obtained from the rental, for tourism purposes, of rooms located in personal owned homes are deemed as revenues from the disposal of the usage right over goods

❖ Revenues obtained from renting a number of 1 – 5 rooms located in personal owned homes are taxed based on income norms

❖ Revenues obtained from renting more than 5 rooms located in personal owned homes are deemed as revenues from the disposal of the usage right over goods and the net income is determined on a real basis and taxed accordingly

❖ New provisions regarding the tax on income derived from renting agricultural goods; thus, the 16% tax on the net rent income is withheld at the moment of the payment, the tax being final

❖ In the case of agricultural goods renting contracts in progress at 1 January 2012, the taxpayers are required to express, in writing, the method of taxation chosen by concluding, before the first payment, an addendum which should be registered with the tax authorities within 15 days of its completion

❖ Advanced payments (those which are not subject to withholding) are made in four equal installments, until the 25th of the last month of each quarter (before, the deadline was 15th of the last month of each quarter, inclusively)

Value added tax

❖ Amendments brought to the definition of capital goods: according to the new provisions, in case of leasing companies, the automobiles and depreciable fixed assets for which the minimum limit of the normal useful life period is less than 5 years, are not treated as capital goods anymore

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Value added tax – continued

❖ In a transaction between two nonresident taxable persons, in which the supplier/service provider is not considered to be established or registered for VAT purposes in Romania, the person liable to pay the related VAT due in Romania is the beneficiary, provided that it is registered for VAT purposes in Romania. According to the previous provisions, this rule was applicable only when the beneficiary was registered for VAT purposes through a fiscal representative

❖ According to the new provisions, taxpayers registered for VAT purposes, which during the preceding calendar year did not exceed the exemption threshold, may require to be removed from records, in order to apply the special exemption regime, between the 1st and the 10th of each month following the fiscal period applied. The previous deadline mentioned for such requests was 20 January of the following year

❖ Taxpayers who, according to the above mentioned provisions, request the removal from records during 2012, are not required to perform any VAT adjustments for goods/services acquired until the 30 September 2011, inclusively

❖ Taxpayers whose VAT number was canceled in accordance with article 153, paragraph (9), letters b – e, do not have the right to deduct the input VAT but are subject to payment obligations in respect of output VAT

❖ According to the new provisions, taxpayers which are not established or registered for VAT purposes in Romania and which import goods in Romania, can request the registration for VAT purposes

Amendments regarding the cancelation of the registration for VAT purposes

❖ Among others, the tax authorities can cancel a taxpayer's registration for VAT purposes, also if:

- ❖ i) no VAT returns were submitted during a calendar semester
- ❖ ii) no acquisitions or deliveries of goods / provision of services were reported in the VAT returns submitted for 6 months / two consecutive quarters during a calendar semester

❖ In the situation described under point ii) above, if the taxpayer does not file an application for the re-registration for VAT purposes within 180 days from the date of cancellation, the tax authorities will not approve any subsequent applications filed in this respect

❖ Taxpayers whose VAT number was cancelled do not have the right to deduct VAT but are subject to payment obligations in respect of VAT

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Excise duties

❖ The level of excise duties for diesel fuel is amended and will be of 374.00 euro/tonne, respectively 316.03 euro/1000 liters (previous level: 358.00 euro/tonne, respectively 302.51 euro/ 1000 liters)

Mandatory social security contributions

❖ Title IX² of the Fiscal Code regarding mandatory social security contributions is amended, in the sense that it is structured in three distinct chapters depending on the type of income, as follows:

Chapter 1: mandatory social security contributions on salary income, income assimilated to salaries and pension income

❖ According to the new provisions, social insurance contribution is due for the indemnity received by companies' administrators and for the amounts received by the representatives within the general meetings of shareholders and board of directors

❖ As concerns the general exemptions applicable, the following in-kind benefits expressly mentioned at point p) of article 296¹⁵, are not subject to mandatory social contributions:

- ❖ the use of the company's vehicles in order to travel from home to the workplace and the way around
- ❖ the accommodation in own establishments
- ❖ granting of food under the conditions provided by law
- ❖ travel permits on all means of transport, granted for business purposes
- ❖ professional insurance premiums, occupational pension insurance, insurance to an optional pension fund and voluntary health insurance, borne by the employers for their own employees, within the deductibility limits provided by law, as the case may be

❖ As concerns the specific exemptions applicable, according to the new provisions, income granted at the time of dismissal and for compensatory payments which is borne by the Unemployment Fund is not subject to health fund contributions

❖ It is introduced the procedure through which it can be declared and paid the mandatory social security contributions for individuals, employed by non-resident employers, who are carrying out dependent activities in Romania

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Mandatory social security contributions – continued

Chapter 2: mandatory social security contributions for persons obtaining income from *independent activities*, agricultural activities and associations without legal personality

- ❖ The following persons are seen as taxpayers to the public pension and health insurance system:
 - ❖ entrepreneurs holding an individual enterprise
 - ❖ members of family businesses
 - ❖ individuals having the status of authorized person
 - ❖ individuals obtaining income from liberal professions
 - ❖ individuals obtaining income from intellectual property rights only where the income tax is determined using the single-entry accounting system
 - ❖ individuals obtaining income from agricultural activities
 - ❖ individuals obtaining income, under withholding regime, from activities referred to in article 52 paragraph (1) (e.g. intellectual property rights, sale of goods under consignment contracts, agent, commission, civil agreements, etc.), from associations without legal personality as defined under article 13 letter e) and from agricultural activities

- ❖ The following individuals do not owe social security contributions:
 - ❖ individuals assured in the public pension system, according to article 6 paragraph (1), point I - III and V of Law no. 263/2010 or benefiting from one of the categories of pensions granted in the public pension system
 - ❖ individuals obtaining income from:
 - ❖ agricultural activities
 - ❖ unincorporated associations

- ❖ No health fund is due by individuals obtaining income from intellectual property rights which also obtain either salary income, unemployment fund, pensions under 740 RON or income from independent activities as detailed above

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Mandatory social security contributions – continued

Chapter 3: : mandatory social security contributions for persons obtaining *other income* or for persons obtaining *no income*

❖ Individuals which during a fiscal year do not obtain either revenues such as those referred to in Chapters 1 and 2 except for income derived from intellectual property rights, nor unemployment fund or pensions below 740 RON, have the liability to pay health fund also on the following revenues:

- ❖ rental of goods
- ❖ investments
- ❖ prizes and gains from gambling
- ❖ fiduciary transaction
- ❖ other sources

❖ Individuals which do not obtain during a fiscal year either revenues such as those referred to in Chapters 1 -3 above, unemployment fund, pensions below 740 RON nor are insured under the health fund system with a payment obligation are liable to pay, on a monthly basis, health fund applied to the gross minimum salary income

❖ Most of the changes brought by Emergency Ordinance no. 125 / 2011 and presented above are entering into force starting with 1 January 2012

❖ Starting with 1 July 2012, the competence for managing the mandatory social contributions payable by the individuals referred to in Chapters 2 and 3 is transferred to the National Fiscal Administration Agency



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