

TAX HOT TOPICS

15 September 2017

Amendments and completions brought to the Fiscal Code

Government Ordinance no. 25/2017 published in the Official Gazette no. 706 from 31.08.2017

- ❖ Ordinance no. 25/2017 („*Ordinance*”) brings new amendments and completions to the Law 227/2015 regarding the Fiscal Code. The main amendments are listed in the following paragraphs.
- ❖ Expenses representing the value of the transferred receivables, as per the law, are included in the category of limited deductibility expenses with a deductibility limit of 30% of the value of the transferred receivables.
- ❖ The expressions "*income derived from independent activities carried out in Romania*" and "*income derived from intellectual property rights derived from Romania*" are defined.
- ❖ Non-taxable income includes the amounts or advantages received by individuals also from dependent activities carried out at the board of aircrafts operated in international traffic.
- ❖ In case of independent activities for which the net income is determined both on the annual income tax basis and on a real system, if said activities cease or are temporarily suspended during the year, the individual should notify the competent tax authorities in this respect, within 30 days from occurrence of the event, in order to recalculate the anticipated income tax payments.
- ❖ The medical services provided on a subscription basis, which are incurred by the employer for its own employees, will not be included in the monthly computation basis of the social security contributions.
- ❖ The provisions regarding the tax due in Romania by representative office/offices of foreign legal entity/entities are amended/completed as follows:
 - ❖ the tax due will be RON 18.000 for a fiscal year;
 - ❖ the payment of the tax will no longer be made in two equal instalments, but it will be declared and paid until the last day of February, inclusively, of the taxation year.
 - ❖ clarifications are brought to what regards the deadline and the method

for computing the tax due by the representative offices set up/ closed during one month of the taxation year.

- ❖ Starting with September 15, 2017, the level of the excise duty due for leaded gasoline, unleaded petrol and diesel oil is increased.

Amendments and completions brought to the Fiscal Procedure Code

Government Ordinance no. 30/2017 published in the Official Gazette no. 708 from 31.08.2017

- ❖ We hereby present the main amendments/clarifications brought to the Law no. 207/2017 regarding the Fiscal Procedure Code through Ordinance no. 30/2017.
- ❖ The rules whereby the fiscal administration will be conducted by public institutions having the quality of fiscal bodies, other than the central and local fiscal body.
- ❖ Petitions, supporting documents, certificates and other documents drafted in a foreign language submitted with the tax authorities without an authorized Romanian translation shall not be taken into account if the tax authorities have already requested their translation into Romanian.
- ❖ According to the new provisions the individuals who exercise a liberal profession will be held individually liable for the payment of the tax liabilities due for the exercised profession. The individual will be held liable within the limit of the assigned patrimony and, if insufficient, the liability will be extended to his/her personal patrimony.
- ❖ New categories of persons who are jointly held liable with the debtor are introduced:
 - ❖ the issuer of the letter of guarantee/ the guarantee insurance policy or the institution that has confirmed the letter of guarantee/ the guarantee insurance policy, if it fails to wire, as per the law, the specific amounts to the state budget income accounts, upon the request of the fiscal body;
 - ❖ the persons which, in bad faith, have determined the debtor to cumulate and avoid the payment of tax liabilities, in case it was requested the start of the insolvency proceedings for that debtor.
- ❖ The taxpayer does not have the obligation to submit a request to change its/his fiscal domicile when a

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change of his domicile or its registered office occurs and such domicile/registered office is the same as its/his fiscal domicile.

- ❖ Amendments/completions are brought in respect of the deadlines and procedure for communicating the fiscal administrative act.
- ❖ Public notaries and bailiffs will no longer have the right to refuse to provide to the tax authorities the information which they learned about in the exercise of their activity.
- ❖ Clarifications are brought to what regards the deadline for submitting the tax registration statement by foreign legal entities, non-resident individuals and individuals who carry out independent economic activities or exercise liberal professions.
- ❖ Credit institutions are obliged to provide to the central fiscal body the request for the assignment of the fiscal identification number or, as the case may be, of the fiscal registration code, for non-resident individuals or legal entities which do not hold a fiscal identification code, every time that bank account are opened or safe deposit boxes are rented. In some cases, for non-resident taxpayers who do not have a permanent establishment in Romania, the tax authority may communicate to

the non-resident taxpayer, by electronic means, the information contained in the tax registration certificate.

- ❖ Provisions are introduced to cover the case when a taxpayer could be declared inactive if for that taxpayer the simplified insolvency procedures started, went bankrupt or a dissolution decision was passed.
- ❖ Clarifications are made in respect of the date at which a tax return is considered to have been submitted in case it was registered with a non-competent fiscal body, the procedure for transmitting such tax return to the competent body being also implemented.
- ❖ Amendments are brought to what regards the extent and method of carrying out the exhaustive tax audit, the selection of the periods subject to the tax audit and the conditions under which an unannounced control and a tax audit can be carried out simultaneously at the level of the same taxpayer.
- ❖ The rules for verifying the personal tax situation of individuals have been amended and such amendments include:
 - ❖ the definition of the non-compliance risk is introduced;

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- ❖ the deadline for transmitting the verification note and for requesting the patrimony statement is clarified;
- ❖ the methods of reviewing the tax situation of individuals if supporting documents/clarifications are not made available by the individual are established;
- ❖ the length of time that the verification of the personal tax situation may take is established;
- ❖ the manner in which the non-disclosing penalty may be applied for the main tax liabilities established through the tax assessment decision is clarified.
- ❖ The tax audit carried out by the central or local fiscal body may also consist of warning and conformity actions.
- ❖ The fiscal obligations established by the tax authority through a tax assessment decision communicated after the expiration of the payment deadlines, are due within 5 days from the date when such decision is being communicated, under certain conditions that the taxpayer needs to fulfil.
- ❖ If the taxpayer submits rectifying tax returns establishing differences in the tax liabilities previously declared, the payment deadline for the resulting differences is the date of submission with the tax authorities of the rectifying tax returns.
- ❖ Clarifications are brought in respect of the situations when certain tax liabilities are not considered to be overdue, such as:
 - ❖ tax liabilities for which payment facilities have been granted or which qualify as conditions for maintaining the validity of the payment facilities.
 - ❖ tax inabilities which are not settled during the insolvency procedures or the judicial reorganisation;
 - ❖ if the sum of the tax liabilities equals or is lower than the amount requested for reimbursement/refund for which the request is running an ongoing settlement procedure.
- ❖ The payment of tax liabilities administered by the central and local fiscal body shall be made by the debtors in a single account, using a single payment order to the State Budget Treasury for all the tax liabilities due, while the debtor may opt to be informed on the manner in which its tax obligations were settled,

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by submitting a specific request in this respect.

- ❖ In case of tax liabilities established by the central tax authorities as a result of reclassifying a transaction, as per the law, the amounts paid in respect of the tax liabilities declared / paid by the taxpayer, are considered as fully representing anticipated payments made in respect of the tax liabilities assessed as a result of the reconsideration, regardless of the budget where they were later on distributed.
- ❖ The communication of the decisions whereby accessory tax liabilities are assessed for tax receivables under the administration of the central fiscal body shall be made according to the ageing and cumulated amount of the accessory tax liabilities and the legal status of the taxpayer.
- ❖ Certain amendments are brought to the payment rescheduling procedure, including with reference to:
 - ❖ the obligation to re-establish the specific guarantees;
 - ❖ the possibility to ask for the differential payment of rescheduling rates;
 - ❖ the possibility to include fines in the rescheduling procedure;
- ❖ the deadlines for payment of the tax obligations upon which maintaining the rescheduling validity is conditional;
- ❖ the cases when the amendment of the decision on the rescheduling payment may be requested;
- ❖ non-applicability of the 5% penalty in the event of losing the rescheduling validity, for the tax liabilities subject to the rescheduling payment procedure for which the non-disclosure penalty is due;
- ❖ the situation in which it is possible to maintain the rescheduled payment for which the validity has been lost;
- ❖ the impossibility of applying the rescheduled payment in respect of the tax obligations which represent a condition for the maintenance of the authorization, agreement or of a similar administrative act.
- ❖ The guarantees for suspension of the legal enforcement, for the lifting of the precautionary measures and for other cases provided by the Fiscal Procedure Code may be set up, as per the law, also by submitting a guarantee letter issued by a non-banking financial institution registered in the records of

the National Bank of Romania for guarantees issuance activities.

- ❖ Clarifications are brought to what regards the date when the precautionary measures become executory, as well as on the consequences on the precautionary measures established by the competent fiscal body in case the criminal prosecution authorities are notified.
- ❖ Under the new provisions, no precautionary measures will be established for the debtor being subject to the insolvency law or when the debtor does not hold any traceable patrimonial assets. Also, if certain guarantees were set up with the purpose of lifting the precautionary measures, they should be maintained for the entire period of validity in which the precautionary measures would have been kept.
- ❖ The legal enforcement shall be suspended or shall not commence for the tax receivables established through a decision of the competent fiscal body if the debtor notifies the tax authority about the submission of a letter of guarantee/ guarantee insurance policy, a 45-day term within which the letter of guarantee/ insurance policy may be submitted being, thus, established.
- ❖ The Ordinance extends the list of situations when the overdue tax receivables administered by the central and local fiscal body are being cancelled in case of closure of the insolvency and judicial reorganization procedures, under certain conditions.
- ❖ New provisions are introduced in respect of the special cases of legal enforcement, respectively for the legal enforcement of the budgetary receivables established through court rulings pronounced in criminal matters, resulting from committing criminal offences.
- ❖ The level of the bail required for the suspension of the legal enforcement of the fiscal administrative act when the object of the appeal filed against that act cannot be valued in cash, is established.
- ❖ In case the legal enforcement of the fiscal administrative act is suspended under the provisions of Law no. 554/2004, the effects of the suspension concern both the main tax obligations individualized in the administrative act suspended on execution, as well as the related accessory tax obligations, even if the latter are individualized in tax administrative acts that are not suspended on execution, while

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non-disclosure penalties are not due during the period of suspension.

- ❖ A new case was introduced when the assets are not seized, i.e. if the value of the assets is lower than 1% of the budgetary receivables. This applies only to payment obligations higher than RON 500,000.
- ❖ New provisions were introduced in order to establish the competence for mutual assistance in recovering debts on the basis of European regulations and international conventions to which Romania is part.
- ❖ The list contraventions which are punishable with fines is updated with the following actions:
 - ❖ failure to observe the 45-days deadline after having notified the tax authority, for submission of the letter of guarantee / insurance policy with the purposes of requesting the suspension of the legal enforcement;
 - ❖ failure to observe the deadline for submission of the questionnaire for determining the tax residence upon arrival in Romania and, respectively, upon departure from Romania.

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For details you can contact any member of TaxHouse team or you can send us a message at the email address office@taxhouse.ro.