

# TAX HOT TOPICS

April 2015

## Amendment regarding the level of NBR's reference interest rate

*The NBR Circular no. 12/2015, published in the Official Gazette no. 219 of 1 April 2015*

- ❖ Starting 1 April 2014, the level of the National Bank of Romania's reference interest rate is of 2% per year.

## Instructions for the organisation of the fiscal receipts lottery

*Order no. 417/2015, published in the Official Gazette no. 240 of 8 April 2015*

- ❖ The Order approves the instructions for the organisation of the fiscal receipts lottery.
- ❖ According to these instructions, the territorial units of the National Agency for Fiscal Administration are responsible for collecting the requests for claiming the prizes, accompanied by the valid fiscal receipts and the copy of the identification document of the holder of the fiscal receipt.
- ❖ According to the Order, the value of a prize is computed by dividing the monthly allocated fund to the number of winning fiscal receipts filed within the legal deadline, the amount of the prize being rounded to RON in the favour of the winner.
- ❖ The present Order also approves the Regulation for the organisation and the draw of the fiscal receipts lottery.
- ❖ Thus, the Regulation defines the relevant terms and abbreviations, presents the steps of the process regarding the fiscal receipts lottery and establishes the responsibilities of those involved in the fiscal receipts lottery.
- ❖ In addition, the Order approves, *inter alia*, the content and the form of the request for claiming the prizes granted as part of the fiscal receipts lottery.

## New regulations regarding the limitation of cash receipts and payment operations

*Law no. 70/2015, published in the Official Gazette no. 242 of 9 April 2015*

- ❖ The present law **extends** the provisions regarding the limitation of receipt and payment operations in cash, applicable so far only in regards to transactions performed between legal entities, to transactions of *freelancers, individual enterprises, family businesses, natural persons authorized to perform independent activities, associations and other entities with or without legal status.*
- ❖ The new provisions also mention the types of **institutions which are excepted** from such rules: the State Treasury, the credit institutions, the electronic money issuing institutions, the authorized payment services institutions, the non-banking financial institutions and the foreign currency exchange entities, as well as gambling operators.
- ❖ The new regulations are also applicable to **receipt and payment operations in foreign currency** performed on the Romanian territory. The foreign currency exchange rate used in order to establish the ceilings up to which the receipts/payments could be performed in cash shall be the one communicated by the National Bank of Romania, on the date when the receipt/payment operations are performed.
- ❖ Depending on the nature of the persons involved in the receipt and payment operations, the present law provides certain **ceilings** up to which the receipts/payments could be performed in cash, as well as certain exceptions from these thresholds:
  - ❖ **In regards to transactions carried out between the aforementioned persons**, the receipt and payment operations in cash are subject to the following daily ceilings:
    - **receipts/payments** in cash, to a daily ceiling of **RON 5,000/person**; and a total ceiling of **RON 10,000/day** in case of payments;
    - **receipts/payments** in cash from and to **cash and carry stores**, to a daily ceiling of **RON 10,000/person**;
    - **payments representing advances to settlement**, to a daily ceiling of **RON 5,000/person**.
  - ❖ For **cancelled invoices relating to returned goods and/or services which were not rendered**, with a value higher than RON 5,000, respectively RON 10,000 in case of cash and carry stores, the repayment of the related amounts in cash is limited to RON 5,000, respectively RON 10,000. The amounts exceeding these ceilings need to be repaid via cashless payment instruments.

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- ❖ **In regards to transactions carried out between the aforementioned persons and natural individuals** the receipt/payment operations in cash, concerning, e.g: *assignment of receivables, receipt/repayment of loans or other financings, deliveries of goods or services, payment of dividends* are limited to a ceiling of **RON 10,000/day/person**;
- ❖ In case of **goods returned by individuals or services not rendered to individuals**, the refund of amounts in cash is limited to a ceiling of **RON 10,000**, except when at the refund date, the latter declare that they do no longer hold a bank account.
- ❖ **In regards to transactions carried out between individuals**, the receipt and payment operations in cash relating to the transfer of the ownership right over certain goods or rights, rendering of services, as well as granting/repayment of loans, other than operations performed via institutions which provide services authorised by the National Bank of Romania, are subject to a **daily ceiling of RON 50,000/transaction**.
- ❖ **The penalty** applicable for not complying with the ceilings established by the present law for receipts and payments in cash, as well as for splitting the receipt/payment of a certain transaction, consists of a **fine of 10% of the receipt/paid amount** which exceeds the ceiling established for each type of operation, but not less than **RON 100**.
- ❖ The new provisions regarding the receipt and payment operations in cash have **entered into force on 9 May 2015**, date when the provisions of Government Ordinance no. 15/1996 regarding the strengthening of the financial-currency discipline have been **repealed**.
- ❖ The present law also brings certain amendments and completions to **Emergency Government Ordinance no. 193/2002 regarding the introduction of modern payment systems**, by providing certain **thresholds of 0.2%, respectively 0.3%** for inter-banking commissions applicable to the value of each operation performed via the utilisation of debit cards, respectively the utilisation of credit cards. These provisions are applicable at 12 months from the entry into force of the present law.

## Republication of the Civil Procedural Code

*Law no. 134/2010, republished in the Official Gazette no. 247 of 10 April 2015*

- ❖ Law no. 134/2010 regarding the Civil Procedural Code was republished.

## Amendments and completions to the Fiscal Code

*Emergency Ordinance no. 6/2015, published in the Official Gazette no. 250 of 14 April 2015*

- ❖ The present Emergency Ordinance amends and completes the provisions of the Fiscal Code in regards to the following aspects:

### **Income from the transfer of immovable properties from the personal patrimony**

- ❖ In case the transfer of the ownership right is performed via a court decision or via other procedure (enforcement), the income tax is computed and cashed by the relevant tax authorities, based on a tax assessment decision within 60 days from the communication date of the decision.
- ❖ Starting 1 June 2015, for the registration with the Land Registry office of the rights acquired based on documents certified by notaries public or inheritance certificates or, as the case may be, court decisions or any other documents applicable in other cases prior to 1 June 2015 and not registered until this date, the registrars do no longer have the obligation to check the

payment of the tax due in regards to the income derived from the transfer of immovable properties from personal patrimony.

### **Income from lease of goods**

- ❖ New provisions are introduced in regards to the situation of termination, during a fiscal year, of the agreements concluded between parties in which the rent is expressed as the RON equivalent of an amount agreed in a foreign currency.

### **Tax on income derived from Romania by non-residents**

- ❖ In this respect, the Emergency Ordinance introduces two new articles regarding the following aspects:
  - ❖ The tax treatment of the income from interest derived from Romania by legal entities resident of an EU Member

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State or European Economic Area country, and

- ❖ The tax treatment of the income from independent activities taxable in Romania derived by individuals which are resident in an EU Member State or an European Economic Area country.
- ❖ Thus, according to the new rules, if the individual/legal entity is a resident of an EU Member State or a state of the European Economic Area, with which Romania has concluded a double-tax treaty and such person presents a valid tax residency certificate, the income derived from Romania is taxed according to the rate and the conditions provided for by the applicable convention, and the individual/legal entity may opt for the regularisation of the tax withheld at source in respect to the income derived from Romania by declaring and paying tax on income/profit for the income/profit related to such revenues, according to the

rules provided for by Title III/Title II of the Fiscal Code.

- ❖ The tax so withheld at source would represent an advance payment made on the account of the income/profit tax due and is deducted from the final income/profit tax due.

### VAT

- ❖ A reduced VAT rate of 9% is introduced in regards to:
  - ❖ supplies of food, including beverages, but excluding alcoholic drinks, for human and animal consumption, of living animals and birds from domestic species, seeds, plants and ingredients used for the preparation of food, products used for completion or substitution of food; and
  - ❖ restaurant and catering services, excluding alcoholic drinks.

## New regulations on the recycling of waste electrical and electronic equipment

*Emergency Ordinance no. 5/2015, published in the Official Gazette no. 253 of 16 April 2015*

- ❖ The Emergency Ordinance regarding the waste electrical and electronic equipment transposes into the national legislation the provisions of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment.
- ❖ **At the date of entering into force** of the present Emergency Ordinance the following acts are **revoked**: Government Decision no. 1037/2010 regarding waste



electrical and electronic equipment, Order no. 2264/2011 on the approval of the methodology for the computation of the annual rate for selective collection of waste electrical and electronic equipment, as well as, Order no. 901/S.B./2005

approving the specific measures for the collection of waste electrical and electronic equipment which present contamination risks for the security and health of the personnel present in the collecting places.

### **Amendments and completions regarding the obligation of the economic operators to use the electronic fiscal cash registers**

*Emergency Ordinance no. 8/2015, published in the Official Gazette no. 285 of 28 April 2015*

- ❖ The present Emergency Ordinance amends and completes the provisions regarding the obligation of the economic operators to use electronic fiscal cash registers.
- ❖ The Emergency Ordinance introduces and regulates the concept of tip, as well as the obligation of the economic operators to issue distinct fiscal receipts for amounts representing tips.
- ❖ According to the Emergency Ordinance, the economic operators will establish based on their internal regulation if the income derived from tips remains in their possession or is distributed towards the employees.
- ❖ The economic operators are also required to prepare justifying documents in regards to the amounts introduced/removed from the sale unit. Thus, the economic operators have the obligation, *inter-alia*, to ensure the registration of the amounts held by their personnel at the beginning of the working program, in a personal cash register, specifically prepared in this respect.
- ❖ Additionally, the Emergency Ordinance provides that at the request of tax inspectors, while present in the sale unit of the goods or services and during the working hours, the personnel of the economic operator has the obligation to present the personal amounts of money available.
- ❖ Non-compliance with the provisions regarding the holding and registering of the amounts of money introduced and removed from the sale unit in the employees' personal cash register is sanctioned with a fine amounting to RON 9,000.
- ❖ In case no fiscal receipts are issued in regards to the tips collected, as well as in regards to the amounts introduced / removed from the sale unit of the goods or

services, that lead to the existence of unjustified amounts, the applicable sanctions vary according to the seriousness of the facts sanctioned, from official notices (in case the unjustified amount is less than RON 300 inclusive, but not more than 3% inclusive of the total value of the goods or services supplied and

registered at the date and hour when the inspection is performed) and up to suspension of the activity of the economic operator for 30 days, starting with the second applicable sanction at the same unit during a period of 24 months in certain situations.

### Decisions of the High Court of Cassation and Justice

*Decision no. 6/23 March 2015, published in the Official Gazette no. 297 of 30 April 2015*

- ❖ The Decisions of the High Court of the Cassation and Justice (“HCCJ”) refers to the registration or not in the fiscal record of taxpayers of the sanction in the form of official notices.
- ❖ The context of this decision is that of a company that has challenged the registration in its fiscal record of a sanction applied via a minutes. In order to sustain its challenge, the company argued that the action that is subject to the minutes was not committed, and the judicial interest is related to the fact that the company’s request to participate to a project based on European funds was rejected due to the fact that the company had not filed a clean fiscal record.
- ❖ In this respect, the HCCJ ruled that the sanction in the form of official notices has to be registered in the taxpayer’s fiscal record, arguing that in order to apply such sanction, the tax authorities are required to issue a written official minutes, document which can be challenged in court.

**Approval of the form and the content of the personal cash register, as well as of the procedure for its registration with the tax authorities**

*Order no. 513/2015, published in the Official Gazette no. 300 of 30 April 2015*

- ❖ The Order approves the form and the content of the personal cash register.
- ❖ In addition, the Order provides that the economic operators shall be responsible with the integrity and daily completion of the personal cash register.
- ❖ The economic operators are also required to notify the relevant tax authority with regards to the preparation of the personal cash register.