

TAX HOT TOPICS

July 2016

Proposal envisaging a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain enterprises and branches

Decision of the Senate no. 87/2016 published in the Official Gazette no. 495 of 1 July 2016

- ❖ The Senate approves the proposal envisaging a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of corporate income tax information by multinational enterprises (with turnover exceeding EUR 750 million, whether headquartered in the EU or outside EU certain).
- ❖ After examination, the Commission for European affairs decided that the present Directive proposal complies with the principles for proportionality and subsidiarity.

Approval of the Methodological Norms regarding the corporate income tax deduction for research and development expenses

Order of the Ministry of Public Finance and of the Ministry of Education and Scientific Research no. 1056/4435/2016 published in the Official Gazette no. 526 of 13 July 2016

- ❖ The Order provides for the new methodological norms regulating the deduction of research and development expenses, as set up at art. 20, para. (5) of Law no. 227/2015 regarding the Fiscal Code.
- ❖ Reiterating the Fiscal Code provisions, the following tax incentives are provided for research and development activities:
 - ❖ additional 50% tax deduction for all eligible expenses incurred in that fiscal year;
 - ❖ the use of accelerated tax depreciation method for machinery and equipment used in research and development activities;
- ❖ As compared to the previous provisions, the new methodological norms provide for certain completions and amendments, mainly targeting the following aspects:



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- ❖ eligible expenses for which the tax incentives apply;
- ❖ methods of valorification of the research and development activities;
- ❖ activities that do not fall under the research and development category;
- ❖ terminology that has to be considered for the purpose of these specific regulations;
- ❖ The present Order repeals the Order of the Ministry of Public Finance and of the Ministry of Education, Research, Youth and Sports no. 2086/4504/2010.

Amendments to Order no. 3841/2015 regarding the approval of the model and content of form (088) „Affidavit concerning the evaluation of the intention and capacity to perform economic activities which involve operations in the field of VAT”

Order of the president of National Agency for Fiscal Administration no. 2048/2016 published in the Official Gazette no. 533 of 15 July 2016

- ❖ The present Order amends the model and content of form (088) „Affidavit concerning the evaluation of the intention and capacity to perform economic activities which involve operations in the field of VAT”.
- ❖ The new form provides for certain amendments, as follows:
 - ❖ the situation in which taxpayers are required to fill in and submit the 088;
 - ❖ the volume of required information;
 - ❖ the number of document types required to be attached.
- ❖ The form will be filled in and submitted by VAT registered taxpayers following the request of the relevant tax authorities, in case of fiscal risk;
- ❖ The analysis with respect to the fiscal risk will be performed by a software application developed at central level, based on the criteria established by the central tax authority.
- ❖ The present Order enters into force within 15 days from the publication in the Official Gazette.



Amendment of Order no. 3769/2015 regarding declaration of supplies / deliveries and acquisitions carried out on the national territory by VAT registered persons and for approval of the model and content of the informative statement regarding supplies / deliveries and acquisitions carried out on the national territory by the VAT registered persons – „394 Form”

Order no. 2.264/2016 published in the Official Gazette no. 578 of 29 July 2016

- ❖ The Order provides for the following amendments:
 - ❖ The provisions of the Order [new 394 Form] apply for operations carried out on the national territory, as follows:
 - a) For the period 1 July 2016 – 30 September 2016, only for operations carried out with taxable persons registered for VAT purposes in Romania and by filling in the information in sections A - C of appendix no. 1;
 - b) Starting with 1 October 2016, the form should be completed in full for all operations carried out on the national territory.
 - ❖ It is important to note that the deadline for the submission of 394 Form has been amended, the new submission deadline (starting with 394 Form for July 2016) is the 30th of the month following the end of the corresponding reporting period (month, quarter, etc.)

Approval of Order of the Ministry of Finance regarding the types of tax liabilities that may be paid with bank cards via POS terminals

Order no. 943/2016 published in the Official Gazette no. 501 of 5 July 2016

- ❖ According to the present Order, individuals who are fiscally identified based on the personal identification number can pay their budget obligations using the POS terminals installed in the territorial units of the State Treasury.
- ❖ In this respect, the types of tax liabilities that can be paid by bank cards via POS terminals are grouped on the following categories: income tax, tax on revenues derived from Romania by non-resident – individuals, excises, social security contributions, health fund contributions, contributions for labor accidents and occupational diseases, contributions for unemployment, VAT, other taxes and tariffs, fines, penalties and seizures.

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Approval of the procedure of filing, payment and rectification of the income tax due for the transfer of real estate from personal property and approval of model and content of the forms used for the administration of the personal income tax

Order no. 1022/2562/2016 published in the Official Gazette no. 524 of 12 July 2016

- ❖ The present Order approves the model and the content as well as related filling instructions of the following forms:
 - ❖ 208 "Informative statement regarding income tax due for the transfer of real estate from personal property”;
 - ❖ 209 "Statement regarding income derived from transfer of real estate from personal property”;
 - ❖ 253 "Assessment decision regarding income derived from transfer of real estate from personal property”;
 - ❖ 254 "Assessment decision regarding rectification of income tax from transfer of real estate from personal property”;
 - ❖ "Register regarding distribution to the administrative-territorial units of the amount.....representing income tax from the transfer of real estate from personal property”;
 - ❖ "Centralization of the amounts to be transferred to the administrative-territorial units into the account 21.A.03.18.00 – Income of the local budget - Income tax due for the transfer of real estate from personal property”;
- ❖ The Procedure regarding filing and payment of income tax due for the transfer of real estate from personal patrimony is approved;
- ❖ The Procedure for issuance of the Tax assessment decision on the revenue derived from the transfer of real estate properties from personal patrimony is approved;
- ❖ The Procedure for rectifying of the personal income tax derived from the transfer of real estate property from personal patrimony is approved.
- ❖ Upon entry into force, the present Order repeals the Order of the Ministry of Economy and Public Finance and of the Ministry of Justice no. 1706/1889/C/2008 regarding the procedure of filing, payment and rectification of income tax due for the transfer of real estate from personal patrimony and approval of model and content of forms provided by Law no. 571/2003 regarding Fiscal Code.

Order of the Ministry of Public Finance for amendment and completion of certain orders of the Ministry of Public Finance

Order no. 1058/2016 published in the Official Gazette no. 529 of 14 July 2016

- ❖ The present order brings amendments and completions to the instructions for applying the VAT exemption for the operations provided by art. 294 para. (1) letters a) – i), art. 294 para. (2) and art. 296 of Law no. 227/2015 regarding Fiscal Code approved by Order of the Minister of Public Finance no. 103/2016.
- ❖ The order modifies the following norms and regulations:
 - ❖ Norms regarding the procedure and conditions for authorizing a VAT warehouse, provided by art. 295 para. (1) letter a), point 8, second line. of Law no. 227/2015 regarding Fiscal Code, approved by Order of Ministry of Public Finance no. 104/2016.
 - ❖ Annex no. 2 “Regulation for the organization and functioning of the territorial commissions for authorizing of operators of excisable products” to Order of the Ministry of Public Finance no. 220/2016 regarding establishment of territorial commissions for authorizing of operators of excisable products and the regulation for their organization and functioning.

Order of the president of the National Agency for Fiscal Administration regarding the Procedure for approval of the half-yearly/annual fiscal period for taxable persons registered for VAT purposes

Order no. 2037/2016 published in the Official Gazette no. 534 of 15 July 2016

- ❖ The present order approves the Procedure for approval of the half-yearly/annual fiscal period for taxable persons registered for VAT purposes as well as the model and content of the following forms: 306 “Request for using the semester or calendar year as fiscal period for VAT purposes” and “Tax decision regarding VAT fiscal period”;
- ❖ Upon entry into force, the present Order repeals the Order of the president of the National Agency for Fiscal Administration no. 6/2010 regarding the Procedure for approval of the half-yearly/annual fiscal period for taxable persons registered for VAT purposes.

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Order of the Ministry of Foreign Affairs regarding the entering into force of certain international treaties

Order no. 852/2016 published in the Official Gazette no. 539 of 18 July 2016

- ❖ The present Order provides the entry into force of several international treaties, among which the following Conventions for the avoidance of double taxation:
 - ❖ Convention between Romania and the Republic of Uruguay for the avoidance of double taxation and the prevention of tax evasion with respect to income taxes and capital gains entered into force on 22 October 2014.
 - ❖ Convention between Romania and the Kingdom of Norway for the avoidance of double taxation and the prevention of tax evasion with respect to income taxes entered into force on 1 April 2016.

Order of the Ministry of Public Finance regarding regulation of certain aspects in respect of the residence of individuals in Romania

Order no. 1099/2016 published in the Official Gazette no. 577 of 29 July 2016

- ❖ The present Order approves the forms for the application of the provisions of art. 7 (regarding definitions of certain common terms), art. 59 (with respect to the personal income tax scope) and art. 230 (regarding corroboration of the Fiscal Code provisions with the provisions of the conventions for the avoidance of double taxation and EU legislation) from the Fiscal Code and the conventions for the avoidance of double taxation, as follows:
 - ❖ “Questionnaire for establishing the fiscal residence of the individual, upon its arrival in Romania”;
 - ❖ “Questionnaire for establishing the fiscal residence of the individual, upon its departure from Romania”;
 - ❖ Notification on fulfilling the residence conditions, according to the provisions of art. 7 and art. 59 from the Fiscal Code or of the Convention for the avoidance of double taxation, signed between Romania and, by the individual

arrived in Romania and whose stay exceeds 183 days;

- ❖ “Notification on fulfilling the residence conditions, according to the provisions of art. 7 and art. 59 from the Fiscal Code or of the Convention for the avoidance of double taxation, signed between

Order of the president of the National Agency for Fiscal Administration regarding the amendment and completion of the Procedure for publishing the list of debtors with outstanding tax liabilities, as well as the amount of these liabilities

Order no. 2266/2016 published in the Official Gazette no. 578 of 29 July 2016

- ❖ The present Order amends and completes the Procedure for publishing the list of debtors with outstanding tax obligations, as well as the amount of these obligations, as follows:
 - ❖ Separate lists of debtors will be published on categories of taxpayers: individuals and legal entities. The outstanding tax liabilities are those

Romania and, by the person who left Romania for a period exceeding 183 days”.

existing at the end of the reporting quarter and unpaid by the publication date of the list;

- ❖ Debtors with outstanding tax liabilities that are lower or equal to the amounts to be reimbursed/refunded from the budget shall be excluded from the list of debtors.

Approval of the instruction regarding the preparation and submission of the semi-annual accounting reports by authorized entities, regulated and supervised by the Romanian Financial Supervisory Authority (ASF) – Financial Instruments and Investment Sector (SIIF)

Instruction no. 2/2016 published in the Official Gazette no. 580 of 29 July 2016

- ❖ The instruction establishes the system of semi-annual accounting reporting by authorized entities, regulated and supervised by the Romanian Financial Supervisory Authority (ASF) – Financial Instruments and Investment Sector (SIIF).

- ❖ Therefore, authorized entities, regulated and supervised by ASF – SIIF, prepare and submit semi-annual accounting reporting at ASF - SIIF on a differentiated basis.

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August 2016

Amendment and completion of certain normative acts regarding foreigners

Ordinance no. 25/2016 published in the Official Gazette no. 670 of 31 August 2016

- ❖ The Ordinance no. 25/2016 amends and supplements certain normative acts regarding foreigners designed to transpose into national legislation the provisions of the EU legislation in this specific area/ other international legal instruments to which Romania is a member state (i.e. Directive 2014/36/EU and Directive 2014/66/EU).
- ❖ Thus, the Ordinance modifies and supplements the following:
 - ❖ Government Ordinance no. 25/2014 on the employment and assignment of foreigners on Romanian territory and for the amendment and supplementing of certain normative acts regarding the status of foreigners in Romania, approved by Law no. 14/2016;
 - ❖ Government Emergency Ordinance no. 194/2002 regarding the status of foreigners in Romania;
 - ❖ Law no. 122/2006 regarding asylum in Romania.

Updated measures regarding the prevention of default

Government Ordinance no. 22/2016 published in the Official Gazette no. 658 of 29 August 2016

- ❖ The present Ordinance amends the GEO no. 77/1999 regarding certain measures for the prevention of default in order to align the legal provisions to the current economic and informational requirements.
- ❖ Thus, legal entities are required to prepare a statement of any amounts still outstanding more than 30 days after the date of issue of an invoice or upon maturity, where the date is clearly specified, to any creditor, or from any debtor, where applicable, legal entity located in Romania.
- ❖ This statement **must be submitted via the Internet to the dedicated address set up for this purpose**, in order to include in the offset procedure the unpaid upon maturity debts on due dates.



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- ❖ Also, the statement regarding the outstanding amounts must be updated by the legal entity taxpayers within one working day from the moment of any changes occurred.
- ❖ According to the normative act, the following actions constitute contraventions punished with fines:
 - ❖ failure to keep or update the record with liabilities and records of claims by the legal entity taxpayer – punished with a fine from RON 500 to RON 1,000;
 - ❖ failure to send the statement prepared by the legal entity within the legal deadline, via Internet, at the address set up for this purpose – punished with a fine from RON 1,000 to RON 5,000;
 - ❖ failure to comply with the confidentiality requirements for information, data and statements by any user – punished with a fine of RON 1,000 to RON 5,000.
- ❖ The new methodological norms for applying the GEO no. 77/1999 will be approved by the Government within 30 days of the publication of this Ordinance.

Approval of new forms for local tax records

Order no. 1.069/1.578/114 of the vice-prime Minister, the Minister of Regional Development and Public Administration, Minister of Public Finance and Minister of Internal Affairs for applying pt. 101 of Title IX „Local taxes" of the Methodological Norms for applying Law no. 227/2015 regarding the Fiscal Code, published in the Official Gazette no. 659 of 29 August 2016

- ❖ The common Order no. 1.069/1.578/114/2016 approves the following:
 - ❖ the form "Register of vehicles subject to license plate registration/(REMTII) registration" model ITL 2016 - 053;
 - ❖ the form "Agreement for sale-purchase of a vehicle" model ITL 2016 - 054 - used by both individuals and legal persons;
 - ❖ The Framework Protocol for Cooperation regarding the exchange of information between tax authorities and local competent authorities in relation to the license plate registration/ registration/ deregistration of vehicles.



Implementation of Common reporting standards (CRS) regarding the financial institutions obligation to provide information on non-resident taxpayers

Order of the Minister of Finance no. 1.939/2016 published in the Official Gazette no. 648 of 24 August 2016

- ❖ The present Order was issued in order to enforce the application of art. 62 para. (2) of Law 207/2015 regarding the financial institutions obligation to provide information on non-resident taxpayers. The hereby Order facilitates:
 - ❖ the implementation of the **Common reporting standards (CRS)** concerning the financial accounts, as elaborated by the Organisation for Economic Cooperation and Development (OECD);
 - ❖ the issuing of provisions for unitarily applying the CRS, the Fiscal Procedure Code (Law no. 207/2015) and the Agreement ratified by Law no. 233/2015 regarding:
 - i. identification of reporting financial institutions;
 - ii. determine which information will be used to identify taxpayers, as well as the financial information related to the accounts opened and/or closed by the previously mentioned taxpayers at such institutions;
 - iii. the identification of non-reporting financial institutions in Romania and non-reporting accounts;
 - iv. compliance rules that financial institutions must use to identify the reporting accounts and the procedure to report such information;
 - v. regulate the administrative norms and procedures in order to ensure the application and observance of the reporting procedures and fiscal compliance rules.

Approval of the Technical Norms regarding customs representation, as well as some instructions for filling the customs statement

Order of the NAFA President no. 2.460/2016 published in the Official Gazette no. 649 of 24 August 2016

- ❖ The present Order approves the Technical Norms regarding the right of representation provided in the (EU) Regulation no. 952/2013 of the European Parliament and the Council from 9 October 2013 for establishing the Union's Customs



Code and Instructions for filling the cassettes 2, 8, 14 and 54 of the customs statement in the particular situations which arise from such representation.

- ❖ Thus, according to the Technical Norms, on the customs territory of Romania the customs statements can be prepared in

own name, through a direct representation or an indirect representation, being mentioned the situations and specific conditions related to each representation type.

- ❖ The Order repeals the Order of the NAFA President no. 3.633/2014.

New regulations regarding the establishment of the criteria for VAT registration

Order of the NAFA President no. 2.393/2016 published in the Official Gazette no. 629 of 17 August 2016

- ❖ The present Order brings a series of new regulations regarding:
 - ❖ the criteria for the registration of trading companies for VAT purposes for companies that request the registration for VAT purposes;
 - ❖ the procedure for the re-registration for VAT purposes after the registration cancelation due to the fact that the company (i.e the taxable person with the economic activity based in Romania) did not justify its intent and ability of conducting an economic activity;
- ❖ The ex-officio cancelation of the registration for VAT purpose for the lack of justification regarding the intent and ability to conduct economic activities.
- ❖ The Order enters into force after its publication in the Official Gazette and repeals the Order no. 3.840/2015 for establishing the criteria for the registration for VAT purposes.

Amendment and completion of certain procedures regarding the registration of petroleum products merchants and registration of the activity of distribution and wholesale of alcoholic beverages and/or processed tobacco

Order of the NAFA President no. 2.329/2016 published in the Official Gazette no. 626 of 16 August 2016

- ❖ The present Order amends and supplements the Order of the NAFA President no. 1.849/2016 for approving the Procedure regarding the registration of economic operators that sell fuels, gasoline, diesel, kerosene, liquefied petroleum gas and biofuels in a wholesale or retail system and for approving the model and content of certain forms.
- ❖ Thus, economic operators holding valid certificates for selling fuels, in a wholesale/retail system have **180 days** (previously 90 days were stipulated), starting with 16 August 2016, to submit to the relevant authority a new registration request and the related documents.
- ❖ On the expiry date, the certificates issued under the Order of the NAFA President no. 2.491/2010 lose their validity.
- ❖ Other changes brought by the present Order refer to:
 - ❖ definitions of certain concepts (e.g. certified);
 - ❖ economic operators subject to the registration procedure (i.e. those who intend to distribute and sale fuels in the wholesale system, with or without storage);
 - ❖ on-site investigation is no longer mandatory and is performed only if the territorial customs authority considers it necessary.
- ❖ Also, the present Order amends the **Order of the NAFA President no. 1.850/2016** for approving the Registration procedure for the registration of the activity of distribution and wholesale of alcoholic beverages and/or processed tobacco, as well as for approving the model and content of certain forms.

Approval of the types of fiscal debts that can be paid by bank cards, in the online system, through the National Electronic Payment System

Order of the Minister of Finance no. 1.376/2016 published in the Official Gazette no. 614 of 10 August 2016

- ❖ This Order approves the types of fiscal debts that can be paid by bank cards, in the online system, through the National Electronic Payment System.
- ❖ The provisions of this order apply only to resident and non-resident individuals identified based on the personal identification number or tax identification number.
- ❖ The entry into force of this order (i.e. 10 August 2016) repealed the Order of the NAFA President no. 718/2008.

Amendment of the deadline submission of the form 394

Order of the NAFA President no. 2.328/2016 published in the Official Gazette no. 601 of 8 August 2016

- ❖ The present Order amends the Order no. 3.769/2015 as follows:
 - ❖ The Informative statement regarding supplies/provisions and purchases performed on the national territory by persons registered for VAT purposes **(Form 394)** is submitted to the relevant tax authority, until the 30th inclusive of the month following the end of the reporting period. If the reporting period is the calendar month, the deadline for submitting the statement for January is the 28th, respectively 29th of February, as applicable.
- ❖ The provision enters into force starting with 8 August 2016.

Approval of the registration procedure, by request, for VAT purposes

Order of the NAFA President no. 2.011/2016 published in the Official Gazette no. 589 of 3 August 2016

- ❖ The normative act sets the procedure for re-registration, by request, for VAT purposes after the annulment, for whatever reasons, of the initial registration, as follows:
 - ❖ the taxable persons were declared inactive under the conditions provided by the Fiscal Procedure Code or were in temporary inactivity registered with the Trade Register;
 - ❖ the associates/administrators of the taxable person or the taxable person itself have/had offences registered in the tax records;
 - ❖ no tax returns were submitted (i.e. form 300) within 6 consecutive months or 2 calendar quarters, depending on the fiscal period;
 - ❖ there were not revealed, in the tax returns submitted, any operations performed within 6 consecutive months or 2 calendar quarters, depending on the fiscal period.
- ❖ The entry into force of the present Order (i.e. 13 August 2016) repealed the Order of the NAFA President no. 18/2015.

Procedure to amend ex-officio the VAT fiscal status ("fiscal vector")

Order of the NAFA President no. 2.012/2016 published in the Official Gazette no. 592 of 3 August 2016

- ❖ The normative act stipulates, among others, detailed information regarding the amendment ex-officio of the VAT fiscal status, namely:
 - ❖ the situations in which the tax authorities may register, ex-officio, a taxable person for VAT purposes, if the respective taxable person does not request the registration;
 - ❖ the situations in which the tax authorities may cancel ex-officio the registration for VAT purposes.
- ❖ The entry into force of the present Order (i.e. 13 August 2016) repealed the Order of the NAFA President no. 3.331/2013.

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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.



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