

# TAX HOT TOPICS

May 2015

## Reference Interest Rate published by the National Bank of Romania

*Circular letter of the National Bank of Romania no. 17/2015, published in the Official Gazette no. 316 of 8 May 2015*

- ❖ As of 7 May 2015, the reference interest rate of the National Bank of Romania is 1.75% per year.

## Simplified customs clearance procedures

*Order of the National Agency of Fiscal Administration no. 1.065/2015, published in the Official Gazette no. 321 of 12 May 2015*

- ❖ The Order amends the Norms regarding the simplified customs clearance procedures.
- ❖ According to the new provisions, the deadline set out for reviewing the authorization obtained for using the simplified customs clearance procedures, issued prior to the entry into force of the Norms, in respect of the types of goods for which the simplified customs clearance procedures apply, as well as the conditions to be fulfilled by the authorisation holders who are exempt from the obligation to notify the arrival of the goods, is extended until 31 December 2015.

## Procedure for the reimbursement of the amounts in addition / unduly paid to the State Budget

*Order of the Ministry of Public Finance no. 528/2015, published in the Official Gazette no. 328 of 14 May 2015*

- ❖ The Order approves the **Procedure for reimbursement of the amounts representing taxes or other revenues of the State Budget**, paid in excess of the legal payment obligation or unduly paid, for which there was no reporting obligation.
- ❖ In order to recover these amounts, the applicants shall submit an application for reimbursement, together with copies of the relevant payment documents, to the public institution or authority that has not performed the requested service or to which amounts have been paid in addition to the legal payment obligation.



- ❖ Where outstanding tax debts exist, the amount requested for reimbursement is refunded only after such debts have been settled thereby.
- ❖ In case of legal entities, the said amounts shall be reimbursed solely by bank transfer to the account indicated in the application,

while in the case of individuals such amounts shall be reimbursed either to their bank account or in cash at the State Treasury counter if the amounts are smaller than RON 500, based on the related refund application.

### **Authorisation/registration of entities performing foreign exchange activities**

*Order no. 564/2015 of the Ministry of Public Finance, published in the Official Gazette no 342 of 19 May 2015*

- ❖ The present Order brings amendments and completions to the authorisation / registration procedure of entities performing foreign exchange activities on Romanian territory, others than those subject to supervision by the National Bank of Romania, procedure regulated by Order no. 664/2012 of the Ministry of Public Finances.
- ❖ Thus, a new appendix has been introduced, namely „*Procedure for requesting the tax certificate*” which sets up the steps and

rules for requesting and receiving from the specialised institution with regulatory attributions within the Ministry of Public Finances, the electronic tax certificate issued by the relevant authority of the National Agency of Fiscal Administration.

- ❖ Also, completions are brought in respect of the cases in which the authorisation for foreign exchange activities is not granted.
- ❖ The provisions of the present Order are applicable starting with 20 May 2015.

### **Bookkeeping requirements for entities authorised, regulated and supervised by the Financial Supervisory Authority**

*Financial Supervisory Authority Instruction no. 1/2015, published in the Official Gazette no. 343/2015 of 19 May 2015*

- ❖ Starting **1<sup>st</sup> of January 2016**, the entities which are authorised, regulated and supervised by ASF – SIF, are required to organize and keep accounting records in

accordance with the International Financial Reporting Standards (IFRS), the provisions of the Accounting Law no. 82/1991, republished, subsequently

amended and supplemented, the accounting regulations issued by ASF – SIF and other applicable legal provisions.

- ❖ This instruction is applicable to the authorised entities, including: financial investment firms, investment management companies, undertakings for collective investment, central depositories,

clearing houses/central counterparties, market/system operators and the Investors Compensation Fund.

- ❖ These entities are required to prepare and publish individual and consolidated financial statements in line with IFRS.

### **Reporting of the information regarding import or supply of crude oil**

*Government Decision no. 333/2015, published in the Official Gazette no. 349 of 20 May 2015*

- ❖ Any individual or legal entity importing crude oil from a third country or receiving a supply of crude oil of from another member state (provided by art. 1 of the Regulation (EC) no. 2.964/95 EC), is required to report the information on each import or supply of crude oil performed at a certain price, to the competent institution of the central public authority in the energy sector, by the 15<sup>th</sup> of each month

following the one to which the information refers.

- ❖ Previously such information was provided to the General Direction for Industrial Policy and Competitiveness within the Economy and Finance Ministry.

### **The amendment and completion of the Procedure for communication by electronic means of remote transmission between the National Agency for Fiscal Administration and individuals**

*Order no. 572/2015 of the Ministry of Public Finance, published in the Official Gazette no. 355/2015 of 22 May 2015*

- ❖ Through the provisions of the present Order, NAFA has extended the “Virtual private space” service so as to include certain new documents which can be communicated to taxpayers via this service.

- ❖ According to the normative act, the list of documents issued by NAFA and communicated to taxpayers through the “Private virtual space”, upon request, is updated with the following:

- ❖ **Tax certificate** provided by Order no. 752/2006 of the Ministry of Public Finances (such document could be communicated **starting with 1 July 2015**);
- ❖ **Income certificate** provided by NAFA Order no. 193/2009 (such document shall be communicated **starting with 22 May**).
- ❖ Moreover, starting with 22 May individuals can also communicate to the tax authorities new documents, such as:
  - ❖ Statement regarding the income obtained in Romania, for the income obtained starting with 2014 – form 200;
  - ❖ Request information regarding the destination of the amount representing up to 2% of the annual income tax on salaries and assimilated income,, related to the annual tax due starting with 2014 – form 230;
- ❖ Statement regarding the estimated income/income norm, for the income obtained starting with 2015 – form 220.
- ❖ The Order provides also the possibility for individuals to request the inclusion in the tax certificate of the amounts certain, liquid and outstanding which they are entitled to receive from the contracting authority.
- ❖ In addition, the present Order provides that all documents communicated via the “Private virtual space” service represent **electronic documents** to which an **extended electronic signature** is incorporated, attached or logically associated.
- ❖ Moreover, the normative act provides that in case of individuals opting for communication via the “Private virtual space”, no other means of communication could be used.

### Annual accounting reporting applicable to credit institutions

*Order no. 3/2015 of National Bank of Romania, published in the Official Gazette no. 371 of 28 May 2015*

- ❖ The Order amends and supplements the Methodological Norms regarding the annual accounting reporting applicable to credit institutions.
- ❖ According to the new regulations, credit institutions with have not performed any activity as of their incorporation and up to 31 December of the reporting year, are not required to prepare the annual accounting reporting, hence, they must submit a statement of inactivity within 60 days from the financial year-end.
- ❖ The above mentioned declaration covers the following identification data:

- ❖ full name of the entity (as per the registration certificate);
- ❖ address and telephone number;
- ❖ registration number with the Trade Registry;
- ❖ unique identification number;
- ❖ share capital.

### Amendments and completions to the Methodological Norms for the application of the Fiscal Code

*Government Decision no. 367/2015 published in the Official Gazette no. 373 of 28 May 2015*

The main changes brought by Decision no. 367/2015 which are applicable starting 1<sup>st</sup> of June 2015 are presented below.

#### Corporate income tax

- ❖ The list including the legal forms for Romanian legal entities, parent companies, which fall under the provisions of 2011/96/EU Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, has been updated with the following legal forms: general partnership (in Romanian „societate in nume colectiv”) and limited partnership companies (in Romanian „societate in comandita simpla”).

#### Income tax

- ❖ The new amendments clarify certain aspects concerning the application of the income tax exemption for **individuals with severe disabilities** deriving income from independent activities, salary income, pension income and income from

agriculture, forestry and fisheries. The exemption applies to the income obtained starting with the date when the taxpayer is declared as having severe disabilities, based on related supporting documents; the taxpayers have the obligation to submit to the competent tax authority or to the income payers, as the case may be, the documents certifying the severity of the disability.

- ❖ Moreover, the Decision states that the income obtained by individuals in **the form of tips (in Romanian „bacsis”)** qualify as income from other sources in accordance with Government Emergency Ordinance no. 28/1999, as amended.
- ❖ For individuals residing in Romania and for non-resident individuals who meet the residency conditions in Romania, performing a dependent activity in another state for a **period not exceeding** the period mentioned in the relevant tax treaty, **the employer must reimburse to the individuals**, in accordance with the

provisions of the Fiscal Procedure Code, **the Romanian income tax initially withheld**, if such **taxpayers extend their stay in that other state beyond the period** mentioned in the tax treaty (the right to tax the salary income is being allocated to the other state).

- ❖ The Norms introduced for the application of art. 64<sup>1</sup> of the Fiscal Code state that the health insurance contributions due in respect of income from the grant of the use of goods are deducted by the competent fiscal body from each source of rental income; in this respect, the appropriate fiscal body is required to recompute the net income / tax base and determine the income tax due.

### **Social security contributions**

- ❖ Clarifications are brought in respect of the method for determination of the annual basis for computing the health insurance contributions ("CASS") due in respect of income from the grant of the use of goods. Thus, if the annual basis is higher than the maximum cap (5 times the average gross salary multiplied by 12 months), the competent fiscal body should determine, through the annual tax assessment, the annual contribution due by applying the individual rate to the cap.
- ❖ In order to determine the annual income tax due, the annual health insurance contribution is properly allocated to each source of income proportionally with the size of the annual rental income from each

source to the total annual calculation basis.

- ❖ The Norms also provide clarifications regarding taxpayers who are exempt from paying the health insurance contribution. Thus, if those taxpayers (children up to 18 years old, students between 18 and 26 years old, the husband / wife / parents with no income, under sustenance etc.) no longer qualify as exempted from the payment of the health insurance contribution and they obtain income for which such contribution is due, then they will owe the health insurance contribution starting the 1<sup>st</sup> of the following month in which they no longer qualify for the exemption. The calculation base is determined on a monthly basis, proportional to the remaining period of the fiscal year for which the contribution is due.

### **Value Added Tax**

- ❖ For the purposes of applying the provisions on the establishment of a single tax group for VAT purposes, the term "shareholders" has been replaced with "associates", which also includes shareholders, according to the Company Law no. 31/1990, republished, subsequently amended and supplemented.
- ❖ The Government Decision updates the example on the applicable VAT rate for intra-community acquisitions in cases where the events that determine the adjustment of the tax basis (i.e. total or partial cancellation of the contract,



granting rebates and other discounts etc.) occur after the date when the VAT rate for food products is modified.

- ❖ **Tips** kept by the economic operators, i.e. those which are not distributed to employees, are subject to the standard 24% VAT rate, for the taxpayers registered for VAT purposes according to the provisions of article 153 of the Fiscal Code. The tax is computed using the gross-up method.
- ❖ Clarifications are brought in respect of the application of the reduced VAT rate of 9%.
- ❖ Thus, for half board **accommodation**, full board accommodation or all-inclusive accommodation, the 9% reduced VAT rate is to be applied to the total price of the accommodation, which might also include alcoholic beverages.
- ❖ For **food products** references are made to the NC codes for which the 9% VAT rate applies; moreover, further specifications are made:
  - ❖ the reduced rate applies to all suppliers, irrespective if they are producers or traders. Considering the nature of several products falling within certain particularly mentioned NC codes (certain seeds, fruits, plants, oil, residues from the treatment of fat), the 9% reduced VAT rate for the supply, import or the intra-Community acquisition of such products can be applied only under certain conditions.

- ❖ For goods sold together, as a package, which are subject to different VAT rates, the VAT rate applicable is the one corresponding to each good, provided that the components of the package can be separated, otherwise the 24% VAT rate is applicable to the entire value of the package, except for those goods granted for free for promotion of sales purposes.

- ❖ Further specifications are brought with respect of the VAT rate applicable to alcoholic beverages being served in a restaurant or part of catering services.

### Excise duties and other special taxes

- ❖ Under the new regulations, the publication of the list comprising the retail prices for cigarettes, having the registration number assigned by the central fiscal authority, shall be made with maximum 7 days and at least 24 hours before the effective date of entering into force of those prices.
- ❖ Additional mentions are brought regarding the exchange rate used to determine the value category applicable to the natural fur confections, guns, other than for military purposes or for sport shooting and bullet cartridges used in this scope, coming from intra Community acquisitions or import operations.
- ❖ The Decision introduces a new provision according to which, for the economic operators who use coal, coke or lignite, coming from own production, intra-community acquisitions and/or

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import operations, the excise duty chargeability occurs when the goods are being used.

- ❖ Under the new regulations, the sites belonging to the economic operators maintaining exclusively emergency stocks, according to Law. no. 360/2013, are authorized as a single tax warehouse for storage purposes, for each economic operator, regardless the number of storage sites he owns, by way of an application accompanied by the document submitted to the economic operator by the Ministry of Economy, Trade and Tourism mentioning the energy products and the quantities of energy products representing emergency stocks which are mandatory to be set and maintained.
- ❖ In all situations when repayment of excise duties is claimed, in order to determine the right to a refund, the analysis of the documentation submitted by the beneficiary and the admission or rejection of the refund claim is made by the territorial tax authority. Previously, the obligation to analyse the documentation and to issue the admission or rejection of the refund claim fell under the

responsibility of the territorial customs authority.

- ❖ The normative act brings clarifications regarding the cases where the exemption from excise duty is not granted for energy products supplied with the scope to be used as fuel for navigation within Community waters and inland waters.
- ❖ The Decision removes the obligation to mark the kerosene used as motor fuel, for excise duty exemption purposes, in the cases provided by article 206 ^ 60 para. (1).
- ❖ Also, for the acquisitions of diesel fuel used for exemption purposes, the marking and colouring is performed in the Member State of dispatch, but the responsibility for marking and colouring the fuel belongs to the registered consignee, including for the mass homogenization of the marker and dye.
- ❖ The amount of constituted security by the authorised warehouse keepers as well as the limits on the average quarterly volume of excise goods exits, provided for the authorisation of a fiscal warehouse for storage purposes, previously expressed in euro, are being converted in lei at an exchange rate equal to 4.7380 lei / euro.



**The indexed nominal value of a meal ticket**

*Order no. 1.069/2015 of the Minister of Labour, Family, Social Protection and the Elderly, published in the Official Gazette no. 374 of 28 May 2015*

According to the Order, the nominal value of a meal ticket for the first half of 2015, starting May, is 9.41 lei.