

# TAX HOT TOPICS

21 September 2015

## Law regarding the Fiscal Code

*Law no. 227/2015 published in the Official Gazette no. 688 of 10 September 2015*

Starting with **1 January 2016**, Law no. 227/2015 regarding the Fiscal Code will replace Law no. 571/2003. The new Fiscal Code brings a new structure, with the following distinct titles and chapters:

- ❖ Title I – General provisions
- ❖ Title II – Corporate income tax
- ❖ Title III – Tax on micro-enterprise's income
- ❖ Title IV – Personal income tax
- ❖ Title V - Mandatory social security contributions
- ❖ Title VI – Tax on income obtained from Romania by non-residents and tax on foreign representative offices established in Romania a
- ❖ Title VII – Value-added tax
- ❖ Title VIII – Excise duties and other special taxes
- ❖ Title IX – Local taxes
- ❖ Title X – Construction tax
- ❖ Title XI – Final dispositions

The new Fiscal Code brings multiple amendments to the existing provisions, among which we mention the following:

### Amendments with general character

- ❖ Amendments with regard to the taxation principles and introduction of the principle of taxation predictability;
- ❖ Rephrasing of some terms' definitions, as well as introduction of new terms, e.g. *tax transparent entities, stock option plan, withholding, withholding income tax and mandatory social security contributions*;



### Amendments regarding the corporate income tax

- ❖ Decrease of the corporate income tax rate applicable to dividends to 5%, starting with 1 January 2017; the current 16% rate remains applicable during the year 2016;
- ❖ The companies carrying on sporting bets activities are no longer included in the category of taxpayers falling under the minimum 5% tax applied to registered revenues;
- ❖ Amendments and completions regarding the application of the corporate income tax exemption for reinvested profit, amongst which the extension of the category of assets eligible for the exemption;
- ❖ Introduction of more favourable conditions for the application of the additional deduction for research and development expenses;
- ❖ Completion of the list of non-taxable income for corporate income tax purposes;
- ❖ Amendments regarding the deductibility of expenses, of which we mention:
  - ❖ Amendments of the general deductibility rule, according to which expenses are deductible if incurred for business purposes (and not for obtaining taxable income, as specified in the current provisions of the Fiscal Code);
  - ❖ Amendments regarding the necessary conditions for deductibility of services expenses;
  - ❖ Introduction of the possibility to deduct the expenses related to non-taxable income by using allocation keys or proportionally with the value of the non-taxable income from the total income registered by the taxpayer;
  - ❖ Amendments regarding the computation of protocol expense and legal reserve deductible for corporate income tax purposes;
  - ❖ Increase of the deductibility limit in case of social expenses from 2% to 5% of the salaries fund, as well as update of the list of expenses that qualify as social expenses;
  - ❖ Decrease of the threshold applicable for the deductibility of the interest expenses related to foreign currency long-term loans, that are contracted from entities other than those specifically mentioned in the law, from 6% to 4%;
  - ❖ Clarifications regarding the deductibility of interest capitalized according with the applicable accounting provisions;

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- ❖ Amendments regarding the deductibility of expenses related to stocks or depreciable fixed assets missing from inventory or damaged;
  - ❖ Amendments and completions regarding the deductibility of provisions and depreciation adjustments;
  - ❖ Extension of the situations in which losses from write-off of receivables are deductible for corporate income tax purposes;
  - ❖ Increase of the limit applicable for reducing the corporate income tax with the value of the sponsorships expenses, from 3% to 5% from the taxpayer's turnover;
  - ❖ Amendments regarding the tax treatment applicable to expenses incurred with employees' optional pension schemes and voluntary health insurance premiums that exceed the amount of EUR 400 per year.
- ❖ Clarifications regarding the adjustment of the fiscal result in case of errors corrected, according to the accounting regulations, based on the profit and loss account or based on the retained earnings account;
  - ❖ In the case of taxpayers which apply the system of annual declaration and payment of the corporate income tax, with quarterly advance payments, the deadline for the advance payment related to the fourth quarter is modified and will be 25 December, respectively 25<sup>th</sup> of the last month of the modified fiscal year (if the case);

### **Amendments regarding the tax on micro-enterprise's income**

- ❖ Inclusion of companies who carry on activities of exploration, development, exploitation of oil and gas deposits, in the list of taxpayers who do not fall under the provisions regarding the tax on micro-enterprise's income;
- ❖ Introduction of a 1% income tax rate applicable to newly established legal entities that met a number of conditions specified by law, for the first 24 months from incorporation;
- ❖ Amendments regarding the computation of the taxable base;
- ❖ Amendments regarding the date on which profit tax is due, in case certain criteria for the application of the tax on micro-enterprise's income are no longer met;
- ❖ Amendments regarding the notification related to the application of the micro-enterprise's regime;



### Amendments regarding the personal income tax

- ❖ Decrease to 5% of the tax rate applicable starting with 1 January 2017, to dividend income; the current 16% rate remains applicable during the year 2016;
- ❖ Increase of the period available to carry forward the fiscal losses incurred by taxpayers that derive income from independent activities, agriculture, sylviculture or pisciculture and the lease of goods, to 7 years (according to the current provisions the carry forward period is 5 years);
- ❖ Completions and clarifications regarding non-taxable income;
- ❖ Amendments and clarifications regarding the change of an individual's tax residence and the obligations of individuals in this respect;
- ❖ In case of income derived from independent activities:
  - ❖ Amendment of the definition of independent activities by including also production activities;
  - ❖ Amendment and completion of the general conditions regarding the deductibility of expenses, by noting, among others, that expenses should be made with the purpose of carrying out the independent activity (and not with the purpose of obtaining income);
  - ❖ Increase of the threshold applicable for the deductibility of social expenses from 2% to 5% applied to the salaries fund;
  - ❖ Increase of the deductibility limit for voluntary health insurance premiums from EUR 250 to EUR 400 per year;
  - ❖ Amendments regarding the deductibility of expenses with mandatory social security contributions due by individuals for the income from independent activities, which according to the new provisions is granted by the competent fiscal authority upon the recalculation of the annual net income/ loss;
  - ❖ Amendment of the deductibility limit applicable in respect of contributions paid to professional associations, from 2% of the computation base established according to the law, to EUR 4.000 per year;
  - ❖ Increase from 20% to 40% of the flat deductible rate applicable for computation of the net income derived from intellectual property rights;

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- ❖ Amendments regarding the categories of income for which the income payers are required to compute and withhold the personal income tax;
- ❖ If the taxpayer opts for the 16% withholding tax, the tax shall be applied to the gross income minus the deductible share of expenses, as the case, and the mandatory social security contributions;
- ❖ In case of income from salaries and assimilated to salaries:
  - ❖ Amendments and completions of the list of income assimilated to salaries, as well as the list of the non-taxable income, amongst which we note the exemption of gift vouchers granted to employees on various occasions, the possibility of granting per diem allowances also to administrators, non-taxation of the personal use of vehicles for which the deductibility of the related expenses was limited;
  - ❖ Amendments regarding the application of personal deductions and increase of the amounts granted as personal deduction;
- ❖ Increase from 25% to 40% of the flat deductible rate applicable for the computation of the net income derived from lease of goods;
- ❖ Amendments and completions regarding the categories of income from investments considered taxable/non-taxable, as well as regarding the computation of the taxable base in case of the aforementioned income;
- ❖ Increase of the threshold for the non-taxable pension income;
- ❖ Amendments regarding the computation of the personal income tax related to income derived from transfer of real estate from personal property, where the price set by the parties is lower than the minimum amount set by the chambers of public notaries; in this case, the public notary notifies the tax authorities in respect of the related transaction;
- ❖ Extension of the list of examples of income that qualifies as income from other sources for personal income tax purposes;

### **Amendments regarding the mandatory social security contributions**

- ❖ Amendments and completions regarding the income subject to mandatory social security contributions, aiming also the alignment to the changes brought with respect to the personal income tax;



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- ❖ Amendments regarding social insurance contributions (pension) due in case of individuals who derive income from independent activities:
  - ❖ According to the new provisions, the basis for the computation of the social insurance contribution is the difference between the gross income and the expenses incurred with the scope of carrying on the independent activities or the income norm (as the case), respectively the difference between the gross income and the flat deductible share of expenses for the income derived from intellectual property rights;
  - ❖ The monthly computation base cannot be lower than 35% of the gross average salary and higher than the equivalent of 5 times the aforementioned salary;
  - ❖ The applicable contribution rate is the individual one, but the taxpayers may also opt for applying the full social insurance contribution rate for normal working conditions;
  - ❖ The contribution is due irrespectively if the taxpayer obtained other income for which social insurance contribution was applied (e.g. salaries income).
- ❖ Amendments regarding the social health insurance contribution:
  - ❖ Starting with 1 January 2017, the taxable base for the social health insurance contribution due for income derived from salaries, pension, independent activities, including income derived from intellectual property rights, from agriculture, sylviculture and pisciculture, lease of goods, investments and also from other sources is capped at 5 times the gross average salary;
  - ❖ Starting with 1 January 2017, individuals who derive income from intellectual property rights, investments or other sources, owe social health insurance contribution in relation to such income even if they are obtaining other types of income for which the health insurance contribution is due, e.g. salary income, pensions, income from other independent activities;
  - ❖ Starting with 1 January 2017, the competent tax authority will adjust on an annually basis the social health insurance contribution owed by individuals, computed by applying the individual social health insurance contribution to the calculation base, determined as the sum of the monthly base for which the social health insurance contribution is due (related to income, other than salaries) and which shall not be lower than 12 times the gross minimum salary per country and neither higher than 5 times the gross average salary multiplied by 12 months;

### **Amendments regarding the tax on income obtained from Romania by non-residents and tax on foreign representative offices established in Romania**

- ❖ Decrease of the tax rate applicable to dividend income, to 5% starting with 1 January 2017; The current 16% rate remains applicable during the year 2016;
- ❖ Amendments and completions regarding the taxable income obtained from Romania as well as regarding the exemptions applied in relation to the income derived by the non-residents from Romania;
- ❖ Inclusion of new provisions regarding the withholding tax for income obtained from Romania by residents in a European Union Member State or in a country with which Romania has concluded a double tax treaty, for activities carried on by artists and athletes;
- ❖ Introduction of new provisions regarding the obligations of intermediaries through which non-residents obtain income from the transfer of securities issued by Romanian residents;
- ❖ Introduction of a chapter regarding the Associations/ Transparent fiscal entities with no legal personality that carry on activities/ obtain income in/ from Romania;

### **Amendments regarding the value-added tax**

- ❖ Decrease of the standard VAT rate at 20% starting with 1 January 2016, respectively at 19% starting with 1 January 2017;
- ❖ Decrease from 9% to 5% of the reduced VAT rate applicable to the supply of scholar books, books, newspapers and magazines, as well as for the access to castles, museums, memorial houses, historical monuments, archaeological and architectural monuments, zoos, botanical gardens, fairs, exhibitions and cultural events, cinemas, others than the exempt ones;
- ❖ Extension of the applicability of the reduced VAT rate of 5% for access to sporting events, others than the exempt ones;
- ❖ Extension of the application of simplified measures, starting with 1 January 2016, for the local supply of:
  - ❖ Buildings, parts of buildings and plots of land for which the taxation regime is applicable;
  - ❖ Investment gold and gold raw material or semi-products, under certain conditions;
  - ❖ Mobile phones, namely devices made or adapted for use in connection with a licensed network and which operate on certain frequencies;

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- ❖ Integrated circuit devices, such as microprocessors and central processing units prior to their integration in products destined for the final user;
- ❖ Game consoles, PC tablets and laptops;
- ❖ Increase from RON 380,000 to RON 450,000, of the value of residence buildings for which the reduced VAT rate of 5%, for the delivery of residence buildings as part of the social policy, is applicable;
- ❖ Amendments regarding the definitions of certain terms, including the definition of *new constructions* and *capital goods* which, according to the new provisions include also fixed assets with a depreciation period lower than 5 years, as well as introduction of new terms, e.g. *real estate operations*;
- ❖ Completions with respect to the application of the pro-rata in some specific situations;
- ❖ Amendments regarding the exercise of the deductibility right; according to the new provisions, if during the audit of a supplier the tax authorities assess additional VAT for certain operations, the beneficiary of such operations is entitled to deduct the tax mentioned on the correction invoice issued by the supplier, in maximum one year from the receipt of the corrected invoice, even though the limitation period has passed;
- ❖ Elimination of the provisions regarding the individual and joint liability for the payment of the tax;
- ❖ Completions regarding the adjustment of the taxable base in respect of uncollected receivables; according to the new provisions, the adjustment of the taxable base can be made also in the situation of implementing a reorganization plan, accepted and confirmed by a court decision according to which the creditor's receivable is amended or eliminated;
- ❖ Elimination of the provisions according to which, starting from 1 January 2017 taxable persons registered for VAT purposes were no longer required to perform the effective payment of the tax to the custom authorities; instead, the applicability of the provisions according to which the tax shall not be effectively paid to the custom authorities by taxable persons who have obtained a VAT payment deferral certificate, were extended;

### Amendments regarding the local taxes

- ❖ Elimination of the hotel tax;
- ❖ Amendments regarding the building categories for which the building tax is not due;
- ❖ Amendments regarding the computation of the building tax, amongst which we note:





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- ❖ For residential buildings owned by individuals or legal entities, the tax is computed by applying a rate between 0.08% and 0.2% on the taxable value of the building, determined according to the law;
- ❖ For non-residential buildings owned by individuals, the tax is computed by applying a rate between 0.2% and 1.3% on the taxable value of the building (i.e. the acquisition value for buildings acquired within the past 5 years preceding the reference year; the value of the construction works, in the case of new buildings constructed in the past 5 years preceding the reference year; or the value from the valuation report, as the case);
- ❖ In case of non-residential buildings, owned by individuals, for which the value of the building cannot be determined considering the above (e.g. no valuation report is available for the last 5 years), the building tax shall be determined by applying a 2% tax rate to the taxable base determined according to the law for residential buildings;
- ❖ For non-residential buildings owned by legal entities, the tax is computed by applying a rate between 0.2% and 1.3% on the taxable value of the building (e.g. the last taxable value registered in the fiscal authorities' records; the value from the valuation report; the acquisition value for buildings acquired during the previous year; the value of the construction works, in case of new buildings, constructed in the previous year);
- ❖ In case the building owner, legal entity, did not update the taxable value of the building in the last 3 years, the building tax rate is 5%;
- ❖ Introduction of different computation methods in specific cases such as: buildings used in agriculture, mixed-use buildings, buildings used for provision of tourism services with a seasonal character, etc.;
- ❖ The tax on buildings, land and vehicles is due for the entire fiscal year by the person who owns those assets at 31 December of the previous fiscal year, irrespectively if these assets are alienated during the reference year;
- ❖ Elimination of the provisions according to which the individuals who have two or more buildings owe an increased building tax, as well as elimination of the provisions regarding to which no land tax was due for the land under a building;



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- ❖ Local authorities may increase the local tax rates depending on certain criteria, but such increase shall not exceed with more than 50% the maximum levels established by the new Fiscal Code;
- ❖ For agricultural land uncultivated for 2 consecutive years, as well as for untidy urban buildings and land, the local council may increase the land tax or the building tax up to 500%, in accordance with the conditions established by the decision of the local council;
- ❖ In order to determine the building tax related to the year 2016, the taxpayers, individuals and legal entities, have to submit until 29 February 2016 a specific declaration regarding the buildings owned as of 31 December 2015.

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*Our team will be pleased to assist you for any questions you may have regarding the amendments brought by the new Fiscal Code. Also, please note that we will organise during the next period trainings regarding the new amendments of the Fiscal Code.*

*For details you can contact any member of TaxHouse team or you can send us a message at the email address [office@taxhouse.ro](mailto:office@taxhouse.ro).*

