

Romania's New Fiscal Code

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Introduction

With effect from January 1, 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
- 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, as outlined below.



Overview Of Amendments

Amendments With General Character

1. Taxation principles: Amendments with regard to the taxation principles and introduction of the principle of taxation predictability.

2. Interpretation: 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 Corporate Income Tax

1. Rate changes: Decreased corporate income tax rate applicable to dividends to 5 percent, with effect from January 1, 2017; the current 16 percent rate remains applicable during the year 2016.

2. Sporting bets: Companies carrying on sporting bets activities are no longer included in the category of taxpayers falling under the minimum 5 percent tax applied to registered revenues.

3. Reinvested profits: Amendments and completions regarding the application of the corporate income tax exemption for reinvested profit, including extension of the category of assets eligible for the exemption.

4. Research and development (R&D) expenses: Introduction of more favorable conditions for the application of the additional deduction for research and development expenses.

5. Non-taxable income: Completion of the list of non-taxable income for corporate income tax purposes.

6. Deductibility of expenses: Amendments regarding the deductibility of expenses, including:

- Amendments to 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 non-taxable income from total income registered by the taxpayer;
- Amendments regarding the computation of protocol expense and legal reserve deductible for corporate income tax purposes;
- Increased deductibility limit in case of social expenses from 2 percent to 5 percent of the salaries

fund, as well as an updated list of expenses that qualify as social expenses;

- Decreased threshold applicable for the deductibility of interest expenses related to foreign currency long-term loans that are contracted from entities other than those specifically mentioned in the law, from 6 percent to 4 percent;
- Clarifications regarding the deductibility of interest capitalized in accordance with applicable accounting provisions;
- Amendments regarding the deductibility of expenses related to stocks or depreciable fixed assets either 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;
- Increased limit applicable for reducing the corporate income tax with the value of sponsorship expenses, from 3 percent to 5 percent 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 EUR400 per year.

7. Adjustments for corrected errors: Clarifications regarding the adjustment of the fiscal result in case of errors corrected, in accordance with accounting regulations, based on the profit and loss account or based on the retained earnings account.

8. Advance tax payments: In the case of taxpayers that 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 either December 25 or the 25th day of the last month of the modified fiscal year (as the case may be).

Amendments Regarding Tax On Micro-Enterprise Income

1. Oil and gas exploration, etc.: Inclusion of companies who carry on activities of exploration, development, and exploitation of oil and gas deposits, in the list of taxpayers who do not fall under the provisions regarding the tax on micro-enterprise income.

2. Reduced rate for first-year trading: Introduction of a 1 percent income tax rate applicable to newly established legal entities that meet a number of conditions specified by law, for the first 24 months from incorporation.

3. Tax base: Amendments regarding the computation of the taxable base.

4. Profit tax due date: Amendments regarding the date on which profit tax is due, in case certain criteria for the application of the tax on micro-enterprise income are no longer met.

5. Notification: Amendments regarding the notification related to the application of the micro-enterprise regime.

Amendments Regarding Personal Income Tax

1. Rate changes: Decrease to 5 percent of the tax rate for dividend income, with effect from January 1, 2017; the current 16 percent rate remains applicable during the year 2016.

2. Loss carryforwards: Increased period available to carry forward fiscal losses incurred by taxpayers that derive income from independent activities, agriculture, silviculture or pisciculture and the lease of goods, to seven years (under current provisions, the carry forward period is five years).

3. Non-taxable income: Completions and clarifications regarding non-taxable income.

4. Tax residence: Amendments and clarifications regarding the change of an individual's tax residence and the obligations of individuals in this respect.

5. Income from independent activities: 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);
- Increased threshold applicable for the deductibility of social expenses from 2 percent to 5 percent applied to the salaries fund;

- Increased deductibility limit for voluntary health insurance premiums from EUR250 to EUR400 per year;
- Amendments regarding the deductibility of expenses with mandatory social security contributions due by individuals for income from independent activities, which according to the new provisions is granted by the competent fiscal authority upon the recalculation of annual net income/loss;
- Amendment of the deductibility limit applicable in respect of contributions paid to professional associations, from 2 percent of the computation base established according to the law, to EUR4,000 per year;
- Increase from 20 percent to 40 percent of the flat deductible rate applicable for computation of the net income derived from intellectual property rights;
- Amendments regarding the categories of income for which the income payers are required to compute and withhold personal income tax;
- If the taxpayer opts for the 16 percent withholding tax, the tax shall be applied to gross income minus the deductible share of expenses, as the case may be, and mandatory social security contributions.

6. Salaries: 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 non-taxable income, among which we note the exemption of gift vouchers granted to employees on various occasions, the possibility of granting
- per diem* allowances also to administrators, and 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.

7. Lease of goods: Increase from 25 percent to 40 percent of the flat deductible rate applicable for the computation of net income derived from lease of goods.

8. Investment income: 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.

9. Pension income: Increased threshold for non-taxable pension income.

10. Transfer of assets: Amendments regarding the computation of 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.

11. Other income sources: Extension of the list of examples of income that qualifies as income from other sources for personal income tax purposes.

Amendments Regarding Mandatory Social Security Contributions (SSCs)

1. Income subject to SSCs: Amendments and completions regarding income subject to mandatory SSCs, aiming also the alignment to the changes brought with respect to personal income tax.

2. Pension contributions: 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 gross income and expenses incurred with the scope of carrying on the independent activities or the income norm (as the case may be), 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 percent of the gross average salary, and cannot be higher than the equivalent of five times the aforementioned salary;
- The applicable contribution rate is the individual rate, but taxpayers may also opt to apply 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).

3. Social health insurance: Amendments regarding social health insurance contribution (SHIC) are as follows, with effect from January 1, 2017:

- The taxable base for the SHIC due for income derived from salaries, pension and independent activities, including income derived from intellectual property rights, agriculture, sylviculture and pisciculture, lease of goods, investments and from other sources, is capped at five times the gross average salary;
- Individuals who derive income from intellectual property rights, investments or other sources, owe SHIC in relation to such income even if they are obtaining other types of income for which SHIC is due, *e.g.*, salary income, pensions, and income from other independent activities;
- The competent tax authority will adjust on an annual basis the SHIC owed by individuals, computed by applying the individual SHIC to the calculation base, determined as the sum of the monthly base for which the SHIC is due (related to income, other than salaries), and which shall not be lower than 12 times the gross minimum salary per country nor higher than five times the gross average salary multiplied by 12 months.

Amendments Regarding Tax On Income Obtained From Romania By Non-Residents And Tax On Foreign Representative Offices Established In Romania

1. Rates changes: Decrease of the tax rate applicable to dividend income, to 5 percent with effect from January 1, 2017; the current 16 percent rate remains applicable during the year 2016.

2. Romania-source income: Amendments and completions regarding taxable income obtained from Romania as well as regarding the exemptions

applied in relation to income derived by non-residents from Romania.

3. Withholding tax: Inclusion of new provisions regarding withholding tax for income obtained from Romania by residents in an EU member state or in a country with which Romania has concluded a double tax treaty, for activities carried on by artists and athletes.

4. Intermediaries: Introduction of new provisions regarding the obligations of intermediaries through which non-residents obtain income from the transfer of securities issued by Romanian residents.

5. Entities without legal personality: Introduction of a chapter regarding associations/transparent fiscal entities with no legal personality that carry on activities/obtain income in/from Romania.

Amendments Regarding Value-Added Tax

1. Standard rate changes: Decreased standard VAT rate at 20 percent with effect from January 1, 2016, and then at 19 percent with effect from January 1, 2017.

2. Reduced rate changes: Decrease from 9 percent to 5 percent of the reduced VAT rate applicable to the supply of educational publications, books, newspapers and magazines, as well as for access to castles, museums, memorial houses, historical monuments, archaeological and architectural monuments, zoos, botanical gardens, fairs, exhibitions and cultural events, and cinemas (unless exempted under the VAT rules).

3. Extension of reduced rate: Extension of the applicability of the reduced 5 percent VAT rate for access to sporting events (other than those exempted under the VAT rules).

4. Simplified measures: Extension of the application of simplified measures, with effect from January 1, 2016, for the local supply of:

- Buildings, parts of buildings and plots of land to 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;
- Integrated circuit devices, such as microprocessors and central processing units, prior to their integration in products destined for the final user;
- Games consoles, PC tablets and laptops.

5. Residential buildings: Increase from RON380,000 to RON450,000 of the value of residential buildings, to which the reduced VAT rate of 5 percent will apply, for the delivery of such residential buildings as part of a social policy initiative.

6. Interpretation: 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 five years, as well as introduction of new terms, *e.g., real estate operations*.

7. Pro rata: Completions with respect to the application of *pro rata* in some specific situations.

8. Deductions: 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 specified on the correction invoice issued by the supplier, within a maximum period of one year from the receipt of the corrected invoice, even though the limitation period has passed.

9. Liability: Elimination of the provisions regarding individual and joint liability for the payment of the tax.

10. Uncollected receivables: 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.

11. Payment to customs authorities: Elimination of the provisions according to which, with effect from January 1, 2017, taxable persons registered for VAT purposes were no longer required to perform the effective payment of the tax to the customs authorities; instead, the applicability of the provisions according to which the tax shall not be effectively paid to the customs authorities by taxable persons who have obtained a VAT payment deferral certificate, were extended.

Amendments Regarding Local Taxes

1. Hotel tax: Elimination of the hotel tax.

2. Exempt building categories: Amendments regarding the building categories for which the building tax is not due.

3. Computation of building tax: Amendments regarding the computation of the building tax, including:

- For residential buildings owned by individuals or legal entities, the tax is computed by applying a rate of between 0.08 percent and 0.2 percent 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 of between 0.2 percent and 1.3 percent on the taxable value of the building (*i.e.*, the acquisition value for buildings acquired within the past five years preceding the reference year; the value of the construction works, in the case of new buildings constructed in the past five years preceding the reference year; or the value from the valuation report, as the case may be);
- 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 past five years), the building tax shall be determined by applying a 2 percent 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 of between 0.2 percent and 1.3 percent 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; or 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 past three years, the building tax rate is 5 percent;
- 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.*

4. Period of ownership: The tax on buildings, land and vehicles is due for the entire fiscal year by the person who owns those assets at December 31 of the previous fiscal year, irrespective of whether these assets are alienated during the reference year.

5. Two or more buildings/land tax: Elimination of the provisions according to which individuals

who have two or more buildings owe an increased building tax, as well as elimination of the provisions regarding which no land tax was due for the land under a building.

6. Local authority provision to increase local rates: Local authorities may increase local tax rates depending on certain criteria, but such increase shall not exceed more than 50 percent of the maximum levels established by the new Fiscal Code.

7. Abandoned/unkempt land and buildings: For agricultural land uncultivated for two consecutive years, as well as for untidy urban buildings and land, the local council may increase the land tax or the building tax by up to 500 percent, in accordance with the conditions established by the decision of the local council.

8. Declaration: In order to determine the building tax related to the year 2016, taxpayers, individuals and legal entities have until February 29, 2016, to submit a specific declaration regarding the buildings owned as of December 31, 2015.