

# *New amendments regarding the Fiscal Code*

11 March 2014

## ***In brief***

Government Emergency Ordinance No. 8/2014 dated 26 February 2014 for the amendment and supplement of various legislative acts and other fiscal-budgetary measures was published on 28 February 2014.

Amongst the legislative acts amended by this ordinance are Law no. 571/2003 regarding the Fiscal Code (“Fiscal Code”) and Ordinance no. 92/2003 regarding Tax Procedure Code, republished (“the Tax Procedure Code”).

## ***In detail***

### ***Direct taxation***

- Corporate income tax exemption is not granted for income derived from the sale / transfer of participation titles held in a Romanian legal entity, according to the law, by a legal entity tax resident in a country which does not have a double tax treaty in place with Romania.
- From a withholding tax perspective, the provisions of European Union legislation are also applicable for payments between Romania and countries which have agreements in place with the European Union that provide measures similar to those provisions.
- Provisions regarding the refund procedure for withholding tax in situations where the tax rate applied exceeds the

rate provided under double tax treaties and European Union legislation, have been removed from the Fiscal Code. These provisions are now included in the Tax Procedure Code.

The main amendments brought in this respect are:

- the payer of the income does not have the obligation to submit a rectifying return further to the refund of the withholding tax to the non-resident;
- the payer of the income may off-set the reimbursed amounts with same tax liabilities;
- the payer of the income has the obligation to rectify the informative statements related to

the settlement performed;

- if the payer of the income no longer exists, the refund of the withholding tax can be performed by the relevant tax authority.

### ***Value Added Tax***

The main amendments to the Fiscal Code on VAT refer to the following:

- The new VAT regime for telecommunications, broadcasting, television and electronically supplied services, applicable as of 1 January 2015:
  - For telecommunications, broadcasting, television and electronically supplied services rendered to non-taxable persons (e.g. individuals) the VAT rate of the

- country where the beneficiary is established will be applied.
- In order to avoid VAT registration for suppliers of such services in each Member State where the beneficiary is established, the legislation provides the possibility of applying the "mini one-stop-shop" regime. Thus, suppliers established within the Community will collect VAT at the rate applicable in the Member State where the beneficiary is established, without the supplier having to register in that state, with the VAT declaration and payment being performed in the Member State where the supplier is established.
  - Suppliers established outside the Community which provide such services to non-taxable persons within the European Union will be required to register in a single Member State in order to declare and pay the VAT related to these services, at the VAT rate applicable in the Member States where the respective beneficiaries are established.
  - Providers applying the "mini one-stop-shop" regime will have to submit, on a quarterly basis, a special VAT statement for all these services rendered to non-taxable persons established in the European Union.

- Amounts set by tax inspectors through fiscal administrative acts, but suspended by the courts, will have to be reported in the VAT return for the month in which the suspension of the fiscal administrative act ends.
- The deadline for submitting own responsibility statements regarding the application of the reverse charge mechanism by purchasers of electricity has been extended to 31 March 2014.

#### **Excise duties and other special taxes**

The main amendments brought to the Fiscal Code on excise duties and now in force are as follows:

- The period of six months provided for the issuance of a new tax warehouse licence also includes the period in which the tax warehouse did not function, as a result of challenging the decision to revoke the licence.
- In the event that a tax warehouse licence is revoked, the excise duties are due only for the excisable products that meet the trading legal conditions.
- Excisable products that no longer meet the trading conditions and are owned by economic operators in bankruptcy may be supplied to authorised production warehouse keepers only for processing purposes based on an invoice and under fiscal supervision.
- The sales performed under the system "buy one, get one free" to individual consumers do not apply for excisable

products which are marked using stamps and banderols.

- The level of excise duties for platinum or combined platinum and gold jewellery is set at EUR 2 / gram.
- Excise duty payers that produce non-harmonised excisable products are those economic operators that own the raw material, regardless of whether the processing is performed by them or by third parties, in Romania or outside Romania.

[Source: The Romanian Official Gazette no. 151 / 28 February 2014]

#### **The takeaway**

Income derived from the sale / transfer of participation titles held in a Romanian legal entity by a legal entity tax resident in a country which does not have a double tax treaty concluded with Romania is taxable in Romania.

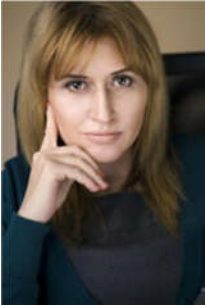
The procedure for refunding withholding tax paid in excess is now regulated by the Fiscal Procedural Code. An important amendment is that the payer of the income is no longer obliged to submit rectifying tax returns in relation to the refund of the withholding tax to the non-resident.

As of 1 January 2015, telecommunications, broadcasting, television and electronically supplied services rendered to non-taxable persons (e.g. individuals) will be subject to the VAT rate of the country where the beneficiary is established.

The period of six months provided for the issuance of a new tax warehouse licence also includes the period in which the tax warehouse did not function, as a result of challenging the decision to revoke the licence.

## **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:



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