
The New Fiscal Code

23 September 2015

In brief

Law no. 227/2015 regarding the Fiscal Code has been published, with its provisions entering into force on 1 January 2016, except for the cases specifically mentioned within the law.

In detail

General provisions

- The fiscal principle of predictability of taxation has been introduced, providing for no changes in the legislative framework for a period of at least one year as of the introduction of new provisions / amendment of existing provisions. Thus, any increase in taxes and contributions, introduction of new ones or the cancelation or reduction of any tax incentive enter into force starting with 1 January of the following year, except where the amendments are based on Romania's international agreements.
- The provisions regarding the setting up and functioning of the Central Fiscal Commission have been transferred to the Fiscal Procedure Code.
- New definitions have been introduced for the following terms: "arm's length principle", "centre of vital interests", "place of effective management", "international transportation", "exemption method", "operations involving financial instruments", "stock option plan", "withholding tax" and "taxes and social contributions paid by way of withholding".
- Some existing definitions have been changed / supplemented: "related parties", "association without legal personality" – replaced with "fiscally transparent entity", "dividend", "royalty", "fiscal value", etc.
- The provision according to which in defining the permanent establishment concept reference can be made to Article 5 – "Permanent establishment" of the OECD Model Tax Convention has been transferred from the Methodological Norms to the Fiscal Code.
- The anti-abuse rules provided by article 11 have been supplemented with the definition of cross-border artificial transactions. These are excluded from the application of Double Tax Treaties.
- The obligation of the tax authorities to adjust the price of a transaction at the median value of market price (i.e. central trend on the market) when deviations from the market value are noticed has been regulated.

Corporate Income Tax

- Foreign legal entities with the place of effective management in Romania are considered taxpayers for corporate income tax purposes. Tax transparent entities with legal personality are no longer considered taxpayers in Romania for corporate income tax purposes.
- The period in which a taxpayer has to communicate to the territorial tax bodies the intention of changing the

- fiscal year period has been reduced (i.e. within 15 days as of the beginning of the new fiscal year).
- New provisions have been introduced with respect to the statute of limitation period for the corporate income tax due by taxpayers with a fiscal year other than the calendar year. The period is now five years starting with the first day of the month following that in which six have passed since the end of the fiscal year for which the tax is due.
- Amendments have been brought in relation to the fiscal correction of accounting errors, by matching requirements with bookkeeping rules. Thus, the possibility to rectify the tax base in the fiscal year when the accounting error is corrected, if this is reflected in the profit and loss account, has been introduced.
- A new provision has been introduced, according to which the additional deduction for R&D activities is not recalculated if the R&D project's objectives are not met.
- The applicability of the tax exemption of reinvested profits has been extended so as to also include subgroup 2.2.9 from the Catalogue regarding the classification and useful life of fixed assets (i.e. computers, tax registers, software, etc.).
- The non-taxable treatment of the revenues from dividends received from Romanian legal entities independent of any other conditions has been reintroduced; as regards the dividends received from foreign legal entities, the current conditions have to be further met for such exemption to apply (i.e. a minimum shareholding of 10% for an uninterrupted period of at least one year).
- Various provisions of the European Directive no. 2011/96/EU, on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, have been transposed into the domestic legislation. Specifically, anti-abuse rules for preventing unlawful tax practices, aimed at obtaining tax benefits contrary to the principles of the Directive, have been introduced. In addition, the non-taxation of dividends received by a Romanian legal entity from a foreign legal entity under certain conditions is only applied as long as these are not treated as deductible expenses at the level of the paying entity.
- The general rule for deductibility of expenses has been amended and the expenses incurred for business purposes are to be considered as tax deductible. Under the current provisions, only the expenses incurred for the purpose of obtaining taxable revenues are treated as deductible.
- Amendments are brought to various deductibility thresholds:
 - the deductibility thresholds for the expenses incurred on behalf of an employee in relation to voluntary pension schemes (i.e. EUR 400/year/employee) and for the expenses for voluntary health insurance premiums (i.e. EUR 250/year/employee) have been eliminated; these expenses are to be taxed at the level of the employee, with the threshold being EUR 400/year/employee for each type;
 - the tax base for the deductibility of protocol expenses and legal reserve no longer includes non-taxable income and expenses related to non-taxable income;
 - the allowance applied to the total salary fund to determine the limit of deductibility for social expenses has been increased from 2% to 5%.
- The provisions regarding the treatment of inventory losses have been harmonised with VAT legislation. Expenses incurred in relation to non-recoverable missing or damaged inventories are treated as deductible if certain conditions are met (e.g. the qualitative damage is due to objective causes properly justified, the

- products have expired, etc.).
- The percentage used for determining the fiscal credit received for sponsorship expenses has been increased from 0.3% to 0.5%.
 - A provision regarding the taxation of the legal reserve upon use for covering tax losses or distribution under any manner has been introduced together with the elimination of the provision according to which a subsequent rebuild of the legal reserve is no longer deductible for corporate income tax purposes;
 - The possibility to deduct the losses incurred in writing off receivables has been introduced in cases these are covered by an insurance policy.
 - Amendments have been brought to the provisions regarding the deductibility of interest expenses and foreign exchange losses for loans contracted from entities others than banks:
 - the interest expense deductibility is limited to a 4% rate (previously 6%);
 - for the purpose of calculating the debt-to-equity ratio, loans with a reimbursement term of longer than one year for which no interest is due according to the contract are also taken into consideration.
 - New rules have been introduced in relation to the obligation of legal entities
- dissolved through liquidation to declare and pay corporate income tax. Thus, the period from 1 January of the fiscal year following that in which the liquidation procedure was initiated and the closing date of the procedure is considered to be one fiscal year for the purpose of recovering fiscal losses, and during this period the taxpayer is not required to declare and pay the quarterly corporate income tax.
- If income from sale / transfer of shares held by a foreign legal entity in a Romanian entity, the obligation of the buyer to withhold the tax (if a Romanian resident) has been eliminated.
 - The amendments applicable to domestic mergers, total or partial spin-offs, transfer of assets and exchange of shares have been harmonised with those applicable to similar cross-border transactions. These amendments include:
 - the neutrality of the contribution in kind to a Company's equity has been eliminated, except for cases where a transfer of a going concern takes place;
 - transfers carried out during a partial spin-off will be neutral only if a transfer of a going concern takes place and the transferor maintains at least one line of activity.
 - The exemption method is presented as a method to be used of preventing double
- taxation of income derived from abroad by a permanent establishment of a Romanian legal entity, if the DTT provides for the use of this method.
- The deadline for declaring and paying the corporate income tax due for the last quarter of the fiscal year by taxpayers applying the advanced payments system, whereby quarterly payments are determined as one fourth of the profit tax due for the preceding year, has been amended. For the last quarter of the fiscal year, the deadline for the obligation to declare and make advance payment will be the twenty-fifth of the last month of that fiscal year.
 - The dividend tax allowance for the dividend distribution between Romanian legal entities will be decreased from 16% to 5%, as of 1 January 2017. Similar to the current provision, the tax is eliminated if a shareholding percentage of a minimum of 10% for an uninterrupted period of at least one year.
- Micro-companies income tax**
- An addition has been brought with respect to the exchange rate used for determining the qualification under the turnover criteria of EUR 65,000, the exchange rate to be used is the one available at the end of the financial year.
 - Taxpayers operating in the oil sector are excluded from the scope of micro-companies income tax;

- A reduced rate of 1% has been introduced for newly set up Romanian legal entities which have at least one employee and have been incorporated for a minimum period of 48 months, with their shareholders not having held equity in other legal entities. This rate is only applied to the first 24 months from registration of the legal entity; the law also provides other requirements for the application of the reduced rate;
- The method for calculating the corporate income tax for taxpayers which shift from micro-companies regime to corporate income tax regime during a fiscal year has been amended. For the purpose of calculating the corporate income tax, only the revenues and expenses recorded starting with the quarter in which the shift was made are taken into consideration. Under the current legislation, all revenues and expenses recorded since the beginning of the fiscal year are considered;
- New deductions to the taxable base have been introduced, including the revenues obtained from a state with which Romania has concluded a DTT if these revenues have been taxed in the foreign state.

Income tax

Tax residence of individuals

- Non-resident individuals who fulfil the Romanian residency criteria stipulated by the Fiscal Code have the obligation to declare the

income derived from any source, from Romania and from abroad, as of the date they become tax residents.

Income from independent activities

- The deductible expenses percentage used for determining the net income derived from intellectual property rights, including from creating art monuments, has been increased to 40%.
- The deadline for submitting the return regarding the estimated income / income norm, for taxpayers who start their activity during the year, has been modified; specifically, the return has to be submitted within 30 days as of the activity starting.
- Income obtained from activities rendered based on civil contracts / conventions, concluded in accordance with the Civil Code, as well as based on agent contracts, have been excluded from the category of income from independent activities for which the income tax representing anticipated payments is withheld at source.
- In the case of taxpayers who derive income from intellectual property rights and who opt for the determination of their income tax withheld at source as final tax (16%), for income tax calculation purposes, deductibility is allowed for the fixed deductible expenses percentage, as appropriate, and mandatory social

contributions withheld at source.

Salary income and income treated as salary

- Gift tickets are non-taxable if they are granted within certain limits, on certain occasions and to certain beneficiaries.
- Benefits from the personal usage of vehicles are non-taxable, under certain conditions.
- Provisions in respect of the non-taxability, within certain limits and under certain conditions, of the allowances and any other amounts of the same nature received during business trips to another town, inside the country or abroad, for the purpose of rendering the activity, have also been introduced for administrators named as per constitutive deeds, administration / mandate agreement, for directors rendering their activity based on mandate agreement according to the law, for the members of directorship in companies managed under a dual system, as well as the supervisory board, and for managers rendering their activity based on management agreements as per the law.
- The monthly gross salary income level, up to which the personal deductions, set as fixed amounts in the Fiscal Code, are granted, has been increased to RON 1,500.
- Voluntary health insurance premiums, as per Law no. 95/2006, borne by

employees, are deductible for salary income tax calculation purposes (at the location where the main job function is exercised by an employee), to the limit of EUR 400 per year, equivalent in Romanian currency.

- In addition, voluntary health insurance premiums, as per Law no. 95/2006, borne by the employer on behalf of its employees, are salary income tax exempt to the limit of EUR 400 per year for each individual.
- The deadline for submitting the informative declaration regarding the start or the end of an individual's activity in Romania who obtains salary income from abroad has been modified; this declaration has to be submitted within 30 days as of the activity start / end date.

Rental income

- The deductible expenses percentage applicable when determining the net rental income, as well as the net income from the lease of agricultural assets, has been increased to 40%.

Investment income

- The income obtained from Romania from the transfer of securities has been defined;
- For determining the gain / loss derived from the transfer of securities, other than derivative financial instruments, their fiscal value should be considered;
- Provisions regarding the gain / loss derived from

transactions with financial gold have been introduced;

- The annual gain / loss derived from the transfer of securities is determined by the taxpayers, based on the tax return concerning the income derived.
- Starting with 1 January 2017, the dividend income is taxed at a 5% income tax rate.

Income from pensions

- The non-taxable monthly amount in respect of income from pensions has been increased to RON 1,050; this threshold will be further increased by RON 50 per year, until the non-taxable threshold reaches the amount of RON 1,200 per month.

Income from other sources

- Income from activities, other than production activities, commerce, provision of services, liberal professions and other than from intellectual property rights has been included in this category.

Social security contributions

- Gifts in cash or in kind granted to employees by their employers for Easter, 1 June, Christmas or other similar holidays of other religions which do not exceed the amount of RON 150 per individual on each occasion are not included in the calculation base for social security contributions.
- Voluntary health insurance premiums, as regulated by Law no. 95/2006, borne by employers for employees,

are not included in the calculation base for social security contributions within the limit of EUR 400/year/individual.

- Similar to the income tax provisions, indemnities and any other similar amounts received by administrators appointed as per constitutive deeds or administration / mandate agreements, by directors who render their activity based on a mandate agreement according to the law, by board members of companies managed under a dual system, supervisory board members, and by managers who render their activity based on the management agreements as per the law, while on business trips in Romania or abroad, for the purpose of rendering their activity, are not included in the social security calculation base within certain limits and conditions.
- Under certain conditions, the benefit in kind representing the usage of company cars for personal purposes is not included in the social security contributions calculation base.
- For income obtained as of 1 January 2017, the monthly calculation base for health insurance contributions is capped at the level of five times the national monthly average gross salary earnings used for the substantiation of the state social insurance budget.
- The monthly calculation base for health insurance contributions for

individuals deriving pension income is that portion of income which exceeds the value of a pension point, as set for the tax year concerned.

- Investment income or income from other sources derived starting 1 January 2017 is subject to health insurance contribution even when the individuals derive other types of income (e.g. salaries, pensions, freelancing activities).
- For income from freelancing activities, agriculture, forestry, fishing, income from partnerships with a legal entity, rental income, investment or for income from other sources derived starting 1 January 2017, the annual health insurance contribution is set by annual tax decisions. The annual contribution calculation base, determined as a sum of the monthly calculation bases on which the health insurance contribution is due, cannot be lower than the value of 12 national minimum gross salaries or higher than the value of five times the national monthly average gross salary earnings multiplied by 12. Only for the purpose of calculating the minimum threshold mentioned above are salaries and income treated as salary also taken into account.
- Individuals who do not derive income and do not qualify for the exemption from paying health insurance contributions or for whom the contribution is not borne from other

sources are liable for monthly health insurance contributions and have the obligation to register with the competent tax authorities. The payment of the contribution is performed quarterly, by the twenty-fifth of the last month of each quarter.

- The pension contribution is due by individuals deriving income from freelancing activities even if they are liable to pay this contribution on other types of income (e.g. salary income).
- For individuals who derive income from freelancing activities and who determine their annual net income based on the real system, the monthly health insurance contribution calculation basis, for social contributions advance payments represents 35% of the value of the national monthly average gross salary earning used for the substantiation of the state social insurance budget. The monthly health insurance contribution calculation basis is recalculated in year following the year in which the income is derived and it is determined as the difference between the gross income derived and the expenses incurred for the purposes of carrying out the freelancing activity. The monthly calculation basis cannot be lower than 35% of the value of the national monthly average gross salary earning or higher than five times the same amount.

Withholding tax

- The scope of withholding income tax due by non-residents from rendering of services, regardless the place of supply, is restricted only to management or consulting services in any field of activity.
- The tax rate for dividend revenues derived by non-residents from Romania has been reduced from 16% to 5%, as of 1 January 2017, similarly to the amendment brought in the case of distribution of dividends to Romanian legal entities.
- A new article regarding non-taxable revenues derived by non-residents from Romania has been introduced.
- The exemption for the interest related to financial instruments / receivables issued by Romanian companies traded on a regulated stock exchange market and which is paid to a non-affiliated party of the issuer has been reintroduced.
- The obligation of electronic submission of the informative statement regarding withholding tax has been introduced.

Value added tax

- The standard VAT rate will be reduced from 24% to 20% as of 2016 and to 19 % as of 1 January 2017;
- Reduction from a 9% to a 5% VAT rate for the supply of school manuals, books, newspapers and some magazines, as well as for the supply of services consisting in the allowance

- of access to castles, museums, cinemas, etc.;
- Inclusion of sports events in the category of operations which are subject to the reduced VAT rate of 5%;
- The threshold for the application of a 5% reduced VAT rate applicable to social housing has been raised to RON 450,000.
- Extension of the application of the reverse-charge mechanism to:
 - The supply of buildings, parts of buildings and plots of land for which VAT is applied;
 - The supply of mobile phones, PC tablets, laptops, gaming consoles and devices with integrated circuits, until 31 December 2018;
 - VAT will not be adjusted for scrapped capital goods. Capital goods are meant to also include fixed tangible assets with a depreciation period of less than five years;
 - Taxable persons performing acquisitions meant for investments to be used for operations both with and without deduction right will be able to deduct fully VAT during the investment process, after which the deducted VAT will be adjusted accordingly.
 - The provisional pro-rate can be calculated at any time during the year;
 - Companies surpassing the VAT registration threshold will be obligated to collect VAT for the advanced payments received before registering for VAT purposes related to goods delivered / service performed after the registration date;
 - Companies can recover VAT if their clients have commenced the insolvency procedure and have begun a reorganisation plan accepted and confirmed by a judicial ruling;
 - Transcription of CJUE decision no.-183/14 *Salomie and Oltean*, by virtue of which, for taxable persons not registered for VAT purposes performing taxable operations, the tax authorities will establish VAT liabilities based on the differences between output and input VAT
 - A transfer of assets which form a line of business performed during a division, merger, sale or as a capital infusion to company assets is outside the scope of VAT only if the receiver of the assets is a taxable person established in Romania;
 - Where such as annulment of a contract / endowment of price reductions for which the supplier has not issued an invoice within the legal deadline, the beneficiary is obligated to issue an invoice for the adjustment of the taxable base;
 - Exclusion of the joint responsibility.
- Excise duties**
- As of 2016, the excise duties for beer, sparkling wines, fermented sparkling beverages, sparkling apple and pear cider, intermediary products and ethylic alcohol will be reduced. As of 2017, the excise duties for gas oil and diesel will also be reduced.
 - Excise duties for cigarettes and still fermented beverages, other than beer and wines, have been increased;
 - Transporters benefit from a reduced excise duty level for diesel until the end of 2016;
 - Excise duties for coffee, yachts, gold and / or platinum jewellery, natural fur garments, vehicles with an engine capacity larger than 3,000 ccm, weapons and ammunition, as well as the tax on crude oil from internal production have been eliminated;
 - Excise duties have been introduced for liquids with nicotine content destined for inhalation and for heated tobacco products which, by heating, discharge an aerosol which can be inhaled (refills for electronic cigarettes);
 - Excise duties for any product re-introduced into the tax warehouse are reimbursed;
 - Adjacent production activities are permitted in the tax warehouse;
 - The validity period of the authorisation for a tax warehouse has been extended to five years;
 - Differences between quantities registered at the moment of dispatch of the excisable goods under a duty suspension arrangement and the

quantities registered upon reception, which can be attributed to the error margin of the weighting equipment, are accepted;

- Heavy fuel oil and energy products treated as such are not marked and coloured if they are transported by fixed pipelines or the excise duties are paid at the level of the diesel;
- The restriction regarding the sale below costs of excisable goods has been excluded.

Local taxes

- Local authorities have been granted the authority to increase local taxes allowances by 50%; previously these could have only been increased by no more than 20%.
- Local authorities have been granted the authority to increase by up to 500% the tax due for agricultural land which has not been processed for a period of two consecutive years, starting with the third year.
- The building tax calculation method has been amended by differentiating between building depending on their destination:
 - residential buildings – tax rate between 0.08% and 0.2% (applicable to the taxable value as per the specific table provided by the law for individuals and the value resulted from the evaluation report for legal entities);
 - non-residential buildings – tax rate between 0.2% and

1.3%; in the case of a building used for agricultural purposes, the applicable tax rate is 0.4%;

- The coefficient used in determining the total surface of a building in cases where the external dimensions cannot be actually measured has been increased from 1.2 to 1.4.
- The provision regarding the increase of building tax for individuals owning more than one building has been eliminated.
- The increased tax rate for building tax due by legal entities is of 5% (if no revaluation was performed during the last 3 years);
 - If a building was acquired during a fiscal year, the building tax for the entire year is due by the seller. The buyer is liable to pay the tax starting with the next year.
- The exemption from land tax for land related to buildings, for the surface covered by the building has been removed;
- The local authorities have been granted the authority to decide on tax exemptions for certain types of buildings / land.
- The percentage by which the car tax for hybrid cars is reduced has been lowered from 95% to 50%.

Construction tax

As of 1 January 2016, the construction tax for agricultural constructions is eliminated, but for other

constructions it will be eliminated as of 1 January 2017.

[Source: Law no. 227/2015 regarding the Fiscal Code, published in the Official Gazette no. 688/10.09.2015]

The takeaway

General provisions

- The predictability of taxation has been increased.
- New clarifications have been brought to the definition of certain terms and concepts.
- Additions have been made to the substance and anti-abuse general rules and new anti-abuse rules have been introduced in connection with implementing European Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

Corporate income tax

- Non-resident entities with their place of effective management in Romania are considered Romanian taxpayers.
- The expenses incurred for business purposes are considered deductible when calculating profit tax. The current provisions state that only the expenses incurred for the purpose of obtaining taxable income are deductible.
- The tax on dividend distributions between Romanian legal entities is to be reduced to 5% as of 1 January 2017.

Tax on microenterprise entities

- For newly set up companies a micro-companies tax rate of 1% has been introduced, if certain conditions are met.
- Companies operating in the oil and gas sector have been excluded from the micro-companies regime.

Income tax

- The deductible expenses percentage used for determining the net income derived from intellectual property rights, including from creating art monuments, as well as for rental income, including the lease of agricultural assets, has been increased to 40%;
- Voluntary health insurance premiums, borne by employees, are deductible for salary income tax calculation purposes while those borne by the employer on behalf of its employees are salary income tax exempt, with each limited to EUR 400 per year per individual;
- For determining the gain / loss derived from the transfer of securities, other than derivative financial instruments, their fiscal value should be considered.
- The annual gain / loss derived from the transfer of securities is determined by the taxpayers, based on the tax return concerning the income derived;
- As of 1 January 2017, the dividend income is taxed at a 5% income tax rate.

Social security contributions

- As of 1 January 2016, individuals deriving income from freelancing activities are liable to pay pension contributions, even if they derive other income, such as salary income.
- The health insurance calculation base for individuals deriving income from freelancing activities is set between 35% of the value of the national monthly average gross salary earning and five times the same amount.
- As of 1 January 2017, the health insurance monthly calculation base is capped at the value of five times the national monthly average gross salary earning.

Withholding tax

- The withholding tax for dividends paid to residents of the states with which Romania has concluded DTTs is to be reduced to 5%, as of 1 January 2017.
- The annual informative statement is to be submitted electronically.

Value added tax

The new Fiscal Code will enter into force on 1 January 2016, bringing the following amendments:

- The standard VAT rate will be reduced from 24% to 20% as of January 2016 and to 19% as of January 2017;
- The reverse-charge mechanism will be applied to the supply of buildings, parts of buildings and plots of land of any kind, as well as for the supply of mobile phones, PC tablets, laptops,

gaming consoles and devices with integrated circuits;

- Application of the reduced VAT rate of 5% to the supply of school manuals, books, newspapers and some magazines, as well as to the supply of services consisting in the allowance of access to castles, museums, cinemas etc.;
- The threshold for applying the 5% VAT rate for social housing has been increased to RON 450,000.

Excise duties

The new Fiscal Code will enter into force on 1 January 2016, bringing the following amendments:

- The excise duty levels have changed for most excisable products;
- Un-harmonised excise duties for coffee, yachts, gold and /or platinum jewellery, natural fur garments, vehicles with an engine capacity larger than 3,000 ccm, weapons and ammunition have been eliminated;
- Excise duties have been introduced for liquids with nicotine content destined for inhalation and for heated tobacco products which, by heating, discharge an aerosol which can be inhaled;

Local taxes

- Local authorities have been granted the authority to increase local tax rates by up to 50%.
- The building tax calculation method has been changed by differentiating between

- buildings with residential and non-residential use.

Construction tax

The tax on special constructions is to be eliminated as of 1 January 2017. As an exception, for

agricultural constructions the tax will be eliminated as of 1 January 2016.

Let's talk

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



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