

Fiscal Code amendments

22 December 2016

In brief

Government Emergency Ordinance no. 84/2016 amending and supplementing certain financial-fiscal normative acts has been published. This Ordinance amends Law no. 227/2015 regarding the Fiscal Code.

In detail

General provisions

Stock-option plan

The definition of stock-option plan has been amended so that shares issued by entities which may be offered on a free basis or at a special price to certain beneficiaries no longer have to be admitted for trading on a regulated market or within an alternative trading system.

Profit tax

Tax year different from the calendar year

Two new paragraphs are included which offer guidelines with respect to the length of the tax year if the taxpayer chooses to return to the calendar year. In this respect, the following are provided:

- If the different tax year is changed back to the calendar year, the last different tax year will include the period between the first day following the end of that different tax year and 31 December of that year. The annual corporate tax return for the

last different tax year has to be submitted by 25 March of the following year. The authorities need to be notified of this change by the twenty-fifth of the third month following the end of the different tax year.

- The second provision refers to when the period of the changed tax year is amended in order to end the tax year at a different date during the calendar year. In this case, the first new different tax year includes the period between the first day following the end of that different tax year and the day before the first day of the new different tax year. The authorities have to be notified of this change within 15 days as of the starting date of the new different tax year.

Reinvested profit

The rights to use software among the elements may be subject to the exemption of taxation of reinvested profit.

The other provisions remain the same.

Tax incentives related to professional and technical education

When determining the taxable profit, expenses for organising and developing professional and technical studies as per specific education legislation are considered deductible.

Tax depreciation

Furthermore, two new provisions are added which state that the following are considered depreciable assets:

- Fixed assets that are booked and used for organising and developing professional and technical studies as per specific education legislation.
- Investments made for organising and developing professional and technical studies as per specific education legislation.

Microenterprises

The threshold of the share capital which once reached by a taxpayer determines the right to opt in for the corporate income tax regime has been reduced.

Two new paragraphs are added which state:

- For Romanian taxpayers which have applied the provisions referring to the threshold of the share capital of EUR 25,000, and who want to opt in to apply for corporate tax payment, the criterion is still considered fulfilled if their share capital drops to RON 45,000.
- Microenterprises which have a share capital of at least RON 45,000 may opt to apply for corporate income tax payment as of 1 January 2017 or during the quarter when this criterion is fulfilled.

Income tax

Non-taxable income

Scholarships, prizes and other rights in the form of accommodation, meals, transport, workwear / safety wear and other similar rights are considered non-taxable when received by individuals enrolled in vocational and technical education, according to the national education regulations.

General rules for determining the net annual income from independent activities

In order to determine the net income from independent activities, expenses incurred for organising and conducting technical and vocational education in accordance with national education legal framework are treated as deductible expenses excluding depreciation expenses which are deductible according to specific rules provided by the Fiscal Code.

Declarative obligations for payers of income

Payers of income subject to withholding tax have to submit a declaration to the tax authorities regarding the calculation and withholding of income tax for each beneficiary of income by the last day of February of the year following that to which the income relates.

An exception to this rule applies, among other categories, to payers of income from salaries and other income treated as such, income from the exploitation in any form of intellectual property rights, pensions or income from leases. Such payers are required to file for each beneficiary of income the Declaration concerning the payment of social contributions and income tax, and the nominal record of insured persons.

Income exempted from social insurance contributions

Gross remuneration received for work performed by day labourers, according to the law, has been added to the list of income exempted from social insurance contributions.

The assessment and payment of social contributions for amounts due to differences in salaries set by law for prior periods

Social contributions which are due on salary differences established by law and granted for prior periods are calculated and withheld on the payment date, and settled by the twenty-fifth day of the month following that in which the income was paid.

For these amounts, social contributions are declared by the twenty-fifth day of the month following that in which the income was paid by filing adjusted declarations for the months to which the income relates.

Value Added Tax

Taxable persons declared inactive

Measures have been implemented regarding taxable persons established in Romania, declared inactive, but re-registered for VAT purposes, as well as for those re-registered according to the Fiscal Procedural Code.

After VAT registration such persons can exercise their deduction right for the acquisitions performed during the period in which their VAT registration code was inactive by reporting the VAT amount in the first VAT return submitted after the re-registration.

Such persons will also invoice with VAT all clients to which they performed sales / rendered services in the period they did not have their valid VAT code, thereby being able to recover the output VAT they collected.

Beneficiaries of the suppliers / providers will be able to deduct

the VAT amount related to the purchases performed during the period when the supplier's VAT code was inactive.

Special regime for farmers

A special optional scheme has been introduced for farmers (individuals, individual companies or family businesses) performing agricultural activities / services.

Farmers who choose to apply this regime will not be able to deduct VAT on purchases nor collect any input VAT. In this respect, they will receive a flat-rate compensation of 1% in 2017, 4% in 2018 and 8% in 2019 of the price of the agricultural products / services to be VAT exempt.

Farmers applying the special scheme will be listed in a special register and their beneficiaries will have to mention the purchases performed from them in specific records.

The flat-rate paid by the beneficiary may be deducted to the same limits and under the same conditions applicable for the VAT deduction.

VAT adjustment for capital goods to be performed annually

VAT adjustment for capital goods will be carried out annually within the adjustment period for 1/5 or 1/20 of the VAT costs incurred in the

acquisition, manufacture or construction of those goods. For certain exceptions, such as the supply of capital assets, the goods ceasing to exist or the taxable person transitioning from small business special scheme to the taxation regime, the adjustment will be performed only once.

The annual adjustment has to be performed by companies for the remaining adjustment period (5 years or 20 years).

The VAT adjustment will be performed either in the period in which the event that generates the adjustment occurs or in the last fiscal period of each year.

These provisions also apply in the case of capital goods which are in the adjustment period as at 1 January 2017 for events that generate VAT adjustments incurred after 1 January 2017.

Taxable persons will no longer have to register in the Registry of Intra Community Operators.

[Source: Emergency Ordinance 84/2016 amending and completing certain financial-fiscal normative acts financial-fiscal, published in Official Gazette no. 977 / 6 December 2016]

The takeaway

The main amendments to the Romanian Fiscal Code relate to:

- Stock-option plans;
- Tax year different from the calendar year;

- Reinvested profit;
- Tax incentives related to professional and technical education;
- Microenterprises;
- Reporting obligations for payers of income subject to income tax withholding rules;
- Excluding the gross remuneration received by daily labourers from the social insurance contribution calculation base.
- Measures have been implemented regarding taxable persons established in Romania, declared as inactive, but re-registered for VAT purposes, as well as for those re-registered according to the Fiscal Procedural Code.
- A special optional scheme has been introduced for farmers (individuals, individual companies or family businesses) performing agricultural activities / services.
- VAT adjustment for capital goods will be performed annually.
- Taxable persons will no longer have to register in the Registry of Intra Community Operators.

Let's talk

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



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