

JANUARY 2003

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TAXATION

In order to repeal certain legal provisions, as well as to amend and complete some of the accounting and tax methodologies, the Government has passed the Decision N° 22, published in the Official Gazette on January 27, 2003.

Methodology relating to the mode of entries in the accounting books and the redemption of differences resulting from the revaluation of the tangible assets has been partially repealed, subject to the harmonisation of the accounting regulations with the Directive IV of the European Economic Communities and the International Accounting Standards

On the other hand, the method of calculating the profit tax has been amended and completed mainly in connection with special situations for the tax implementation and tax deductible and non-deductible expenses.

The new regulation explains the meaning of "export complex" notion subject to the implementation of profit tax in a reduced quota

According to the law, export complex means export of equipment, installation or part of installation, separately or together with technologies, licences, know-how, technical assistance, designing, constructions and assembling, operating and taking over works, as well as related spare parts and materials.

In this category are also included designing and installation of geological works,

operational works for mineral deposits, building of electric networks, performing of drilling hole, building of oil wells, transport installations and pipelines, depositing and distribution of oil products and natural gases, as well as complete ship building, units construction in the agricultural, land melioration, hydrotechnical, forest fittings, forestry operation fields, etc.

Profit-tax-deductible and non-deductible expenses

Publicity and advertising expenditure should be incurred in order to promote the corporate image, products or services by using means of information based on a written agreement including:

- a) necessary costs for delivering the publicity messages;
- b) costs for the goods offered as samples in advertising campaigns for testing the products at the points of sale, as well as costs of other goods offered in order to stimulate the sales;
- c) packing costs over the validity period set by the tax payer.

In the category of deductible expenses are also included the fees and delay penalties due by foreign entities or within commercial contracts concluded with foreign entities or non-resident persons, which according to the Double Taxation Treaties are considered as interest for avoidance of double taxation.

On the other hand, the profit tax expenses representing differences in payment that occurred during the previous years or the current year or the taxes paid abroad and those withheld at source for non-resident individual or legal entities for incomes obtained in Romania are included in the non-deductible expenses.

The new regulation also details the method of calculation for the deduction of the interest expenses and the rules under which these calculations shall be performed.

As to the deductibility of the interest expenses, the companies carrying on financial leasing activities and the mortgage loan companies are assimilated to the credit institutions

The Instructions pertaining to the method of calculation of the profit tax provide that the provisions relating to the deductibility of the interests are not applied to the banks and credit institutions, regardless of their indebtedness state of the capital.

The contribution in kind to a company's share capital, performed between two persons/entities registered as VAT payers does not represent delivery of goods

This rule is applicable only in case the beneficiary has the right of entire deduction of VAT.

Tax regime in the VAT matter for the goods originated from abroad, ranked under import regime or under suspensive customs regimes etc. has been repealed

During this month the Methodological Norms for the Government Ordinance No. 61/2002 on the collecting of budgetary debts has also been published.

Briefly, below are set forth some provisions of the two enactments replacing the provisions of the Government Ordinance No. 11/1996.

The relevant institution to administrate the collection of budgetary debts and pay off is the Finance Ministry, and the payer of the

budgetary debt is the debtor or any other person authorized or interested in performing the payment

The legal entities headquartered in Romania and having opened branches and/or work units, shall perform the payment of the budgetary debts both for its own activity and for the branch and/or work unit activity.

Initiation of proceedings before the relevant authorities to challenge the fixation of the debts towards the State budget does not suspend the payment obligation

However, upon the debtor's request, on well grounded reasons, it may decide to suspend the payment obligation until the complaint is settled, but only after having constituted a security fund rising to the level of the amount challenged by the debtor.

Apart from interests, delay penalties of 0,5% per month/part of month and fines, the debtor may be penalized with a 10% penalty on the due amount

Thus, failure to transfer within 30 days as from the due date the amounts due as budgetary debts calculated and held back on source entails the sanction with a 10% penalty.

The right to acquire the forced execution of debts is subject to a statutory limitation period of 5 years as from the end of the financial year during which the said right arose

Compared to the previous regulation, the limitation period of 5 years is unique for any category of budgetary debt and the starting point of the limitation period has been

amended; therefore, the state benefits from a longer period for collecting its debts.

CAPITAL MARKETS

Publishing at the middle of 2002 the ordinances pack constituting the legal framework in the capital markets matter entailed the approval of enactments in application of the main provisions.

Therefore, in the Official Gazette No. 53 of January 30, 2003 it has published the Order No. 102 of the National Securities Commission ("NSC") for the approval of the Regulation No. 3/2002 on the authorisation and functioning of the financial investment services companies (the ex securities companies - "SSIF").

The above mentioned Regulation details the conditions and proceedings relating to the authorisation for the SSIF's setting up and functioning, the suspension/cancelling/amendment/completion of the operation permit, the authorisation of the financial investment services brokers and of the persons within the Internal Control Department, the regulations setting the SSIF's activities, etc.

For operating legally, the SSIF has the obligation to acquire from the NSC the setting up permit based on which the SSIF shall be registered with the trade register office

After the registration, SSIF shall be subject to a new examination on behalf of the NSC within the proceedings for the issuance of the operational permit.

For SSIF's setting up and operation, it is necessary to meet at least the following conditions:

- as to the share capital, its minimum limit ranges between 2 to 8 thousand millions lei, depending on the activity carried on by the SSIF; the contribution in kind could not be up to 25% of the share capital subscribed and paid up;
- as to the members of the Board of Directors and the executive management, the Regulation forbids from appointing persons having criminal or fiscal records or having been sanctioned by the NSC, the National Bank of Romania or the Insurance Supervisory Commission by prohibiting from exercising the professional activity;
- as to the SSIF's employees, it is obligatory that among them, there are at least two authorised brokers and at least one person authorised as member of the internal control department;
- in addition, it is obligatory that the SSIF conclude an agreement with a financial auditor registered with the NSC's register.

NSC shall also authorise beforehand the amendments to the SSIF's legal statute

Therefore, SSIF shall require the NSC's authorisation for increasing/decreasing the share capital, amending the object of activity, amending the shareholders structure, the Board of Directors' structure and the executive management's structure, for amending the company's name, the headquarters or the setting up of secondary headquarters.

The agreements concluded by SSIF should meet certain conditions regarding the form and the substance, required by the Regulation

The agreements shall be concluded in written form, depending on the client or the type of the service provided (trades on order, discretionary portfolio administration) and shall have enclosed the application for opening a current account.

SSIF is compelled to distinctly point out in the accounting books the amounts received from the clients.

It is also forbidden to operate transfers between the clients of the same SSIF without existing money compensation.

CONSUMER PROTECTION

In order to strengthen the means of consumer's protection, the Government Ordinance No. 130/200 on the legal regime of distance agreements has been passed with amendments and completions by the Law No. 51/2003, published in the Official Gazette No. 57/January 31, 2003

In the advance payment agreements, one of the main requirements is to indicate all contact details of the trader and details on telephone, fax, e-mail and registration unique code.

Before concluding the agreement, as well as during its execution, the trader has to inform the consumer in due time, correctly and concretely, in writing or on other durable support information, on all essential elements of the agreement.

The agreement is deemed to be concluded the moment the confirmation message is received by the consumer

Compared to the previous text of the ordinance which sets forth the moment of agreement's conclusion as the time when the order has been received by the trader, the new enactment provides that the agreement is deemed to be concluded at the date of receiving the confirmation message from the trader concerning the consumer's order.

The competent Court to settle the disputes is the Court from the consumer's domicile

In case of disputes, the task to prove the information obligations, the fulfilling of time limits and the existence of consumer's consent on the distance communication techniques is incumbent on the trader.

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