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FISCAL CODE

On January 1st, 2004 the Law No. 571/2003 on the Fiscal Code has entered into force (hereinafter referred to as the “**Fiscal Code**”), unifying the Romanian tax legislation and harmonising it with the European Union tax legislation.

Therefore, the provisions regulating the profit tax, the income tax, the tax on incomes of micro-enterprises, the tax on incomes obtained in Romania by non-residents and tax on representative offices of foreign companies set up in Romania, the value-added tax, the excises, the local taxes and fees have been gathered under the same enactment.

Legislative stability

In the attempt to create the stability premises for the tax regime, the Fiscal Code provides that, after its issuance, any amendment or completion of the tax regulations shall be performed only by way of measures amending and completing the law according to which the Fiscal Code is approved.

Principles

The basic principles of taxation set forth by the Fiscal Code are:

- neutrality (equal conditions for Romanian and foreign investors);
- certitude of taxation (clear legal norms, that do not lead to arbitrary interpretations, as well as clear

deadlines, manner and payable amounts for each taxpayer);

- fiscal equity at the level of natural persons (establishing equal fiscal burdens by different incomes taxation);
- efficiency of taxation (by providing long-term stability).

Profit tax

Tax rate

The profit tax rate is further on steady at 25% of the taxable profit, with certain exceptions.

The dividends received from a foreign legal person from a European Union member state are deemed non-taxable, after Romania’s accession to the European Union, if the Romanian legal person holds a minimum of 25% of the participation titles in the foreign legal person for an uninterrupted period of at least 2 years.

New deductible expenses

By reference to the previous regulation, the following are also deemed as deductible expenses (i) the expenses of transport and accommodation within the country and abroad incurred by the employees and the administrators; (ii) the expenses incurred on behalf of an employee to an optional occupational pension scheme; (iii) the expenses for private health insurance premiums.

The social expenses have limited deductibility, within the limit of a rate of up to 2% (compared to the previous rate of

1.5%), applied to the salary fund annually realized.

Tax deductibility regime of the reserves constituted for doubtful customers

As a new feature, these reserves shall be deductible within the limit of 20% (25% starting with January 1st, 2005 and 30% starting with January 1st, 2006) of the value of receivables from customers, which are recorded after January 1st, 2004 and are not paid within 270 days as from the due date. It is also necessary that the said receivables cumulatively meet the following conditions: (i) they are not pledged or mortgaged; (ii) they are not payable by an affiliate person of the taxpayer and (iii) they were not included in the taxable incomes of the taxpayer.

Amendment of the level of deductible annual interest rate

In the case of loans obtained from entities other than authorised credit institutions, the deductible annual interest rate is limited to the level of the reference interest rate of the National Bank of Romania that corresponds to the last month in a quarter, for loans denominated in ROL, and to the level of an annual interest rate of 9%, for loans denominated in foreign currency.

Difference between accounting depreciation and fiscal depreciation

The Fiscal Code has eliminated the conditioning of tax deduction of the depreciation expenses on their registration in the accounting system. Therefore, the depreciation calculated according to the

accounting regulations shall not be deductible, while the fiscal depreciation shall be deductible. This provision is applied only to fixed assets put into operation after January 1st, 2004.

Other tax measures and incentives

In order to draw the taxpayers in carrying out sponsorship activities of public law libraries, the Fiscal Code provides the entire deduction of the expenses incurred for this type of sponsorship and the deduction of an amount representing 2% of the annual accounting profit in computing taxable profit.

Profit obtained from the sale/assignment of real estate properties located in Romania or participation titles

The Fiscal Code sets forth favourable fiscal rules concerning the taxation of Romanian and foreign legal persons that sell/assign real estate properties located in Romania or participation titles held in a Romanian legal person.

As a result, if certain conditions are met, the above operations shall be subject to a reduced profit tax of which rate is of 10% compared to the profit tax standard rate of 25%.

Fiscal attestation certificate

The obligation to obtain a fiscal attestation certificate in case of assignment or alienation in any form of companies' shares has been eliminated from the provisions regulating the profit tax. Therefore, the issuance of the

fiscal attestation certificate has remained compulsory only in the cases provided by Order no. 448/1999, namely upon request of taxpayers - legal entities, as well as in case that the taxpayer changes its headquarters.

Tax record certificate

A recent amendment in this field has been brought by the Government Ordinance No. 29/2004 on the regulation of certain financial measures.

The above enactment has eliminated the obligation of the foreign natural and legal persons not fiscally registered in Romania to file the tax record certificate when setting up companies wherein they will hold the capacity of shareholder/associate or appointed legal representative.

For these categories of persons is sufficient the natural person or legal person representative's authentic (notarized) statement, as the case may be, attesting that they do not have any fiscal debts.

Income tax

Tax schedule

The solution previously approved within the Government Ordinance No. 7/2001 on income tax (abrogated by the Fiscal Code), according to which the incomes are subject to tax based on the globalisation principle by using a tax schedule consisting of progressive rates applied to the income parts, is further maintained.

As from January 1st, 2005, the incomes shall be subject to tax based on an annual schedule, respectively a monthly schedule, for calculating the tax anticipatory

payments, and on an annual schedule for calculating the tax for the taxable annual global income, schedules which shall be approved by a Minister of Public Finance order.

Introducing a new residence criterion

The center of vital interests of a natural person is a new term in the Romanian law, which is not defined by the Fiscal Code.

This completion refers to the persons who may be subject to global income tax.

Therefore, apart from the Romanian natural persons domiciled in Romania the foreign citizens or the Romanian citizens domiciled abroad shall be also deemed as resident in Romania from the fiscal point of view, irrespective of the duration of their stay on the Romanian territory, in case that it shall be considered that the center of their vital interests is located in Romania.

The main consequence of this amendment is the tax applied in Romania to the persons above mentioned both for the incomes obtained in Romania and for those obtained abroad. It is to be noted that previously the taxpayers aforesaid were subject to tax in Romania only for the income obtained in Romania.

Extension of the non-taxable income category

According to the Fiscal Code, the maternity allowances and the child care allowances (until now these were considered as incomes having the nature of salary and were accordingly subject to taxation), as well as the compensations for material and moral

damages have been also included in the non-taxable incomes category.

Supplementary deduction in determining the annual global income

By reference to the previous regulation, the following are also provided as deductible: (i) the expenses for thermal rehabilitation and for refurbishment of the residence dwelling, (ii) the insurance premiums for the residence dwelling and the interest of the mortgage loan contracted for the residence dwelling, (iii) the contribution to optional occupational pension schemes and the contribution to private health insurances, deductible within the limit of 200 Euro per year, (iv) the union dues set according to the union law.

Supplementary benefits in determining the copyright tax

Starting with January 1st, 2004 a 60% deduction shall be applied (compared to the 40% deduction applied until now), and in case of incomes obtained from the creation of works of monumental art, the rate of forfeit expenses reducing the taxable income has increased from 50% to 70%.

Incomes having the nature of salary

A new feature, by reference to the previous regulation, is the method of tax computation. This method is further on differenced by primary job and other sources, but in both cases the deduction of the mandatory social contributions is allowed.

The basic personal deduction from which all employees benefit is of ROL 2,000,000 per month.

Incomes obtained from transactions with shares purchased within the "stock options plan" system (shares purchased at a preferential price)

The fiscal regulation of this type of incomes represents an absolute novelty within the Romanian legislation.

Therefore, the benefits in the form of the right to *stock options plan*, at the moment of employment and, implicitly, at the moment of granting, are not included in the salaries and are not subject to income tax.

Nevertheless, the gain obtained in case of transactions with shares purchased within the *stock options plan* system (representing the difference between the sale price and the preferential purchase price, diminished by the commission payable to intermediaries) is considered as income obtained from investments and is subject to a final tax of 1% payable by withholding at source.

Tax on incomes of micro-enterprises

The micro-enterprises are legal persons that cumulatively meet at the end of the preceding year the conditions relating to the object of activity (excluding the activities in the banking, insurance, capital markets field), the number of employees (from 1 to 9), the gross incomes up to 100,000 Euro, the share capital (concerning this condition, the Romanian legal person of which share capital is held by a shareholder legal person

having more than 250 employees can not be a micro-enterprise.

The tax rate for the incomes obtained from any source is of 1.5%.

The fiscal period for micro-enterprises has been modified; the payment obligation and the obligation to submit the declaration must be fulfilled each quarter.

Tax on the incomes obtained by non-residents

Tax rates

Some of the tax rates applicable to the incomes obtained in Romania by non-residents have been amended, as follows:

- 5% for the incomes obtained from the term deposit interests, deposit certificates and other saving instruments at banks and other authorised credit institutions located in Romania;
- 20% for the incomes obtained from gambling;
- 15% in case of any other taxable incomes obtained from Romania.

Other new features

- (i) tax on incomes obtained from independent activities performed by non-residents, in case that such activities are not carried out through a permanent establishment or do not exceed a period of 183 days during the fiscal year; therefore, the fiscal regime applied in this case is similar to those applied to Romanian residents;

- (ii) tax on incomes obtained by non-resident natural persons from activities carried out in their capacity as director, founder or member of the board of directors of a Romanian company, by applying a tax system similar to those applied to Romanian natural persons;

- (iii) tax on incomes obtained from real estate properties and from the assignment of participation titles held by non-residents, by applying the provisions relating to the global income tax, in case of natural persons and by applying the provisions regarding the profit tax in case of legal persons;

- (iv) in case that there are applicable double taxation treaties, the fiscal residence certificate shall be submitted by the non-resident to the income payer (formerly the said certificate was submitted to the fiscal authority).

Tax on foreign representative offices established in Romania

The regulations relating to the tax on representative offices have been considerably amended. Thus, it is provided that any foreign legal person having a representative office authorised to operate in Romania must pay as annual tax a fix amount, representing the equivalent in ROL of Euro 4,000 at the exchange rate communicated by the National Bank of Romania for the last banking day of the preceding year.

At the same time, there is no mention regarding the tax applied based on the commissions received from the foreign legal person or based on the income norms set by

type of representative offices depending on the number of employees serving within the said representative offices. The annual tax shall be paid in two equal instalments (until June 20th and, respectively, December 20th)

Value-added tax

Main amendments

- (i) distinct regulation of the special regime applicable to the small enterprises, respectively to the taxable persons whose annual turnover, declared or realized, is less than the threshold of ROL 2 billion;
- (ii) setting of the possibility to exercise the deduction right for the goods acquired before the registration as value-added tax payer, if these goods are used for carrying out taxable operations;
- (iii) introduction of a reduced rate of 9% for collection of payments for:
 - taxes of admission to museums, fairs, exhibitions;
 - editing, printing and sale of school manuals, books, newspapers and magazines, except for those exclusively intended to advertising;
 - prosthesis of any type, orthopaedic products, medicines for human use and veterinary use, accommodation in hotels and camping;
- (iv) maintaining the calendar month as the fiscal period for taxpayers with respect to the value-added tax, except for the taxable persons who have not exceeded during the previous year a turnover from taxable operations of Euro 100,000

included, for which the calendar quarter has been set as fiscal period;

- (v) introduction of the possibility to reduce the VAT collected for the merchandise returned and for unpaid invoices in case of clients' bankruptcy.

Excises

The Fiscal Code has unified the legal provisions relating to the current regime of excises, the supervising and authorisation regime, as well as the regime of marks for the products, by repealing: (i) the Law No. 521/2002 concerning the supervision and authorisation regime of products, the import and circulation of products subject to excises; (ii) the Government Ordinance No. 158/2001 on the excise regime; (iv) the Government Emergency Ordinance No. 30/2003 for instituting special measures concerning the production, the import and commercialisation of mineral oils and (v) the Government Decision No. 582/1997 relating to the introduction of the marking system of marks for alcoholic beverages.

Categories of excises

Two categories of excises are provided:

- harmonised excises (for the following products: alcohol and alcoholic beverages, tobacco products and mineral oils);
- other excises set at national level (for certain types of coffee, cars, perfumery products, natural fur products, gold and platinum jewellery, video-audio products, guns, yachts and motor boats).

Necessity of establishing the fiscal warehouse

All economic agents that produce or commercialise products subject to excises (alcohol, cigarettes, mineral oils etc.) must establish a fiscal warehouse, being forbidden to hold a product subject to excises out of this warehouse if the excise levied on the said product has not been paid to the State.

The products shall circulate from a warehouse to another one without being necessary to pay the excises. These excises are chargeable only when the products are delivered for consumption.

A “zero” rate excise for still wines has been set and it has been introduced as **excise exempt products** the products delivered, in the context of the consular or diplomatic relationships, to acknowledged international organisations within the limits and under the conditions set forth by the international conventions, to the NATO armed forces.

Local taxes and fees

The Government Ordinance No. 36/2002 on local taxes and fees has been repealed; however the Government Emergency Ordinance No. 45/2003 regarding the local public finances, entered into force on January 1st 2004, is still in force.

Amendments

The main amendments brought in this field are the following:

- the tax for the buildings rented shall be paid by the owner and not by the lessee.

- for the buildings owned by legal entities, after their entire depreciation, upon calculating the tax on buildings a reduction incentive by 15% of the inventory value has been granted.
- the industrial parks are exempt from the tax on buildings and from the tax on land.

In order to ensure the implementation of the Fiscal Code, implementation norms for each category of taxes and fees shall be issued.

Until these implementation norms shall be passed, the following have been issued for the implementation of the Fiscal Code: the Norm regarding the procedure of granting the certificates of exemption from the payment in customs of the value-added tax for the imports provided by art. 157 paragraph (3) of the Law 571/2003 concerning the Fiscal Code, the Instructions for the implementation of the exemptions from value-added tax for exports and other similar operations, for international transports and for the operations relating to the international traffic of goods, as well as several orders of the Minister of Public Finances.

FISCAL PROCEDURE CODE

Upon the same date, January 1, 2004 the Government Ordinance no. 92/2003 on the Fiscal Procedure Code (“the **Fiscal Procedure Code**”) has entered into force, regrouping within a single normative act all the legal provisions with respect to fiscal procedure, for the first time after 60 years (since the Fiscal procedure code of 1942).

Principles

The Fiscal Procedure Code is based on the following principles:

- Uniform implementation of legal provisions;
- The fiscal authority's right of assessment;
- The pro-active role of the fiscal authority principle;
- Use of Romanian language within the fiscal administration;
- The right of the taxpayer to be heard on the matter and the obligation of the taxpayer to cooperate;
- The principle of prevalence of the economic over the legal (in this way all revenues and patrimonial proceeds shall be taxed even though the activities from which they were obtained do not meet the legal requirements);
- The principle of fiscal confidentiality.

The right of the taxpayer to be heard on the matter

According to the new Fiscal Procedure Code, the fiscal authorities, prior to taking a decision or issuing any act, must allow the taxpayer the right to express its point of view with respect to the relevant facts and matters.

Allowing this right to the taxpayer becomes optional if:

- The decision to be taken may be delayed and thus cause the possibility of not checking the exact financial status with respect to the fulfilment of the taxpayer's obligations or for taking other measures provided by law;

- The state of facts described shall not suffer significant amendments with respect to the amounts pertaining to the fiscal related debts;
- The information submitted by the taxpayer within a statement or a request shall be accepted;
- Enforcement proceedings related measures shall be undertaken.

The right of a person to refuse to provide information

Certain natural persons, such as the taxpayer relatives, as well as certain professional groups, such as: lawyers, fiscal consultants, priests and doctors are allowed the possibility to refuse to provide information to the fiscal authorities.

The right to ascertain fiscal obligations and its statute of limitation

The statute of limitation for the fiscal authorities' right to recalculate the taxes and duties of a taxpayer is of 5 years calculated starting with the beginning of the fiscal year subsequent to the year in which the fiscal obligation was set, except for tax evasion, case in which the statute of limitation is of 10 years.

Interests and delay penalties

Delay penalties for failure to perform payment of the fiscal duties is set at a 0.5% level for each month and/or for each fraction of month of delay, starting with the first day of the month subsequent to the delay and until payment is performed.

Payment of the delay penalties shall not exclude the taxpayer's obligation to pay the interests calculated according to the law from the date payment is due until payment is performed.

The term within which the payment of obligations towards the State may be deducted through banks without owing interests or delay penalties has been prolonged from 48 hours to three working days.

Challenging the fiscal administrative acts

In case taxpayers decide to submit a request for challenging a fiscal act, they are allowed to withdraw it without being deprived of the right to file a new such request within the legal terms, that is 30 days from receipt of the fiscal administrative act.

Moreover, they are entitled to challenge also other fiscal administrative acts besides those referring to ascertaining budgetary debts or enforcement measures.

Other amendments refer to the following matters:

- The possibility to renounce to analyse the merits of the challenged cause,

should certain procedural grounds be met;

- The possibility of the fiscal authority that analyses the request for challenging a fiscal act to request information from persons, other than the tax payer, whose fiscal interests might be affected;
- Suspension of the proceedings for analysing the request for challenging a fiscal act should the fiscal act be the object of a separate proceeding.

Sanctions

Failure to submit the fiscal statements within the term provided by law shall be considered a misdemeanour and be sanctioned with a fine (ranging from ROL 500,000 to ROL 15,000,000 for natural persons, and from ROL 5,000,000 to ROL 100,000,000 for legal persons), while delay penalties in this case are not provided.

In case of income statements to be submitted by natural persons, the fine for failure to submit them within the term provided by law is of ROL 100,000 ranging to ROL 1,000,000.