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**FISCAL CODE****Amendments to the Fiscal Code**

Additional adjustments of the fiscal rules have been brought by the means of the Law No. 163/2005 concerning the approval of the GEO No. 138/2004 concerning the amendment and completion of the Law No. 571/2003 regarding the Fiscal Code.

Published in the Official Gazette no. 466/01.06.2005, the enactment came into force three days later (i.e. June 4<sup>th</sup>, 2005), save for certain provisions specifically deferred for a longer period.

A summary of the main amendments brought to the Fiscal Code may be found below.

**Clarifications with respect to the taxes applicable to revenues from interests**

Pursuant to Law No. 163/2005, the taxation rates applicable to the income deriving from interests may vary in consideration of the date on which the instrument generating it has been set up.

Thus, in case of all instruments (time deposits, savings instruments, civil agreements etc) set up before 1<sup>st</sup> of June 2005, the 1%-tax rate shall remain applicable, whereas for the instruments originated after this date, the tax rate shall be of 10%.

**Taxation of incomes resulted from securities transfer**

Law No. 163/2005 brings certain distinctions between the taxation rates applicable to the transfer of securities, in consideration of elements like: the date of the acquisition of such securities, the duration for which they have been held within the portfolio, respectively the envisaged category of securities.

According to the above-mentioned criteria, the taxation rates applicable to the incomes obtained as a result of the transfer of securities, other than the fund units in open investment funds and shares, are as follows:

- 1% for the securities acquired before May 31<sup>st</sup>, 2005, irrespective of the date of their subsequent assignment;
- 1% for the income gain from the transfer of securities acquired and assigned during 1<sup>st</sup> of June, 2005 and December 31<sup>st</sup>, 2005;
- 16% for the net incomes obtained from the transfer of securities acquired starting with June 1<sup>st</sup>, 2005 and transferred after January 1<sup>st</sup>, 2006 within less than 365 days as of the acquiring of such securities;
- 1% for the net incomes obtained from the transfer of securities acquired after June the 1<sup>st</sup>, 2005 and transferred further beginning with 1<sup>st</sup> of January, 2006 within more than 365 days as of the acquiring of such securities.

The gains resulted from transfer of securities on a regulated market shall be taxed in accordance with the above-mentioned rules, but only starting with 1<sup>st</sup> of January, 2006.

**Establishment of the basis for taxation of the gain obtained from securities transactions**

In case of securities transactions, other than the fund units in open investment funds and shares, the related gain or loss shall be determined made at the date of the completion of such transaction, based on the agreement concluded between the parties.

The gain shall be computed as difference between the assignment and respectively the acquisition price, for each type of securities, as diminished with the corresponding prices.

In this respect, we note that the notion of "fees due to the intermediaries", such as used in the former regulations, has been replaced with the "corresponding costs", which could be extended, so as to diminish the basis for taxation, and implicitly to the diminishing of the quantum of the tax.

Law No. 163/2005 also comprises rules for determining the net earning at the end of the fiscal year, taking into account the entire portfolio of securities.

Therefore, the net earning shall be determined as positive difference between the gains and the losses registered during the year as a result of the securities transfer,

except for those acquired free of costs within the Mass Privatization Program.

**Rules regarding the withholding and payment of tax**

In case of earnings resulted from securities transfer (other than the fund units in open investment funds and social parts) assigned earlier than 365 days as of their acquisition, the obligation to determine and pay the tax belongs to the person holding and transferring such securities. The time limit for the payment of the tax is January 25<sup>th</sup> of the next financial year.

The same rules are applicable in respect of the payment of the tax, in case of securities transferred on a regulated market, irrespective of the duration for which such securities have been held.

However, in case of securities (other than the fund units in open investment funds and shares) held for more than 365 days, the obligation to determine and pay the tax is incumbent the intermediaries, and the time limit for the payment of such tax is the 25<sup>th</sup> calendar day of the following month.

As a transitory rule, please note that during 1<sup>st</sup> of June 2005 – December 31<sup>st</sup>, 2005, the obligation to withhold and pay the tax on gains from securities transfer acquired and assigned during the above-mentioned period is incumbent on intermediaries, irrespective whether the securities have been held more or less than 365 days.

As regards the calculation and withholding of the tax on gains from the transfer of share transfer, the existing rules remained unchanged, such obligations belonging to the assignee at the moment of the execution of the transaction, in accordance with the agreement existing between the parties.

#### **Taxation of the incomes from sale of real estates**

In case of real estate transfer, the gain resulted from the transfer of the said real estate shall be subject to taxation, if such transfer takes place prior to 3 years as of the date of the acquisition, and also over any real estate, free of constructions, acquired after January 1<sup>st</sup>, 1990.

Notwithstanding, the taxation is not applicable to the contribution in kind to the share capital of companies as well as to the above-mentioned gains in case the respective goods have been acquired by the seller/assignor by the following means:

- restoration of the property right;
- inheritance or donation between relatives up to the forth grade inclusive;
- real estate exchange.

As regards the taxation of the incomes obtained from the transfer of real estate without constructions, it is to note that the gains from the transfer of the lands acquired before January 1<sup>st</sup>, 1990 shall not be taxed.

## COMMERCIAL LAW

### **Amendments to Law on national currency redenomination**

New specifications concerning regulations on redenomination have been introduced by Law no 101/2005 approving GO no. 5/ 2005 on amendment of paragraph (1), art. 6 of Law no. 348/ 2004 on national currency redenomination, published in the Official Gazette of Romania, no. 378 on May 5<sup>th</sup> 2005.

### **Amendments with consequences on share capital of commercial entities**

As observation, the new regulations refer to all types of economic entities, even if Law no. 101/ 2005 refers expressly to the modification of the face value of shares issued by the joint stock companies.

Thus, by June 30<sup>th</sup> 2005, joint stock companies/limited liability companies/private companies shall decide the modification of face value of shares, so as the new value to be multiple of 100 (by reference to former currency), by accordingly increasing/ decreasing the share capital.

We mention that this obligation is not compulsory for the economic entities for which face value of shares is at present multiple of 100 by reference to former currency.

In case the above mentioned obligation is not complied with, the Trade Register National Office shall register ex officio, on July 1<sup>st</sup> 2005, the decrease of shares face value issued by the above mentioned entities.

Even if this provision describes a possible implementation of rules regarding redenomination, the necessary instruments thereto have not been provided yet. Such rules are to be further passed.

Registration with the Trade Register of the increase or decrease of share capital under the above mentioned conditions shall be performed without payment of legal fees and taxes, in compliance with provisions of Companies Law no 31/ 1990, as republished.

#### **Former notes and coins change**

According to the new enactment, former notes and coins are to be changed into new notes and coins on a unlimited period, at the National Bank of Romania branches, carrying out cash activities, and at credit institutions units authorized for this operation by the National Bank of Romania Governor 's order.

#### **Denomination effects in accounting**

Law no. 101/ 2005 provides that companies, national companies, regies autonomes, research - development national institutes, co-operative companies and other legal persons, having the obligation to organise and operate their bookkeeping, shall

prepare financial statements only in the new currency, starting from July 1<sup>st</sup> 2005.

### **INFRASTRUCTURE/REAL ESTATE**

#### **Amendments to Law no. 50/1991 on construction works authorisation**

Law no 50/1991 on construction works authorisation was amended after Law no 119/2005 was passed, published in the Official Gazette of Romania, no 412 on May 16<sup>th</sup> 2005.

Amendments brought by the new enactment refer to conditions and competence of issuing construction permits, and also to the legal consequences of construction /demolition permits cancellation.

#### **Issuance of construction permits**

With respect to the competence in issuing construction permits, mention should be made that the issuance of the said permit must be authorised by General Mayor of Bucharest, under the relevant district mayor approval of works pertaining to the modernisation, rehabilitation, municipality public utility networks, urban transport, utilities and communications (including optical fibre) transport and distribution, when performed in Bucharest.

We further mention the setting of the district mayors' competence to issue construction permits for public utility networks joining and branching if these works are executed in Bucharest.

**Conditions for issuing construction permits**

Law no. 119/2005 eliminates the requirement of a sworn statement by building permit solicitor attesting that the building is not the subject matter of any dispute pending with the Romanian courts.

However, the new enactment provides that the authority issuing construction permits is not liable for subsequent possible losses due to pending disputes existing upon the issuance of the construction permit.

**Legal consequences of construction / demolition permits cancellation**

If the previous regulation provided that filing a claim for cancellation of construction/ demolition permit resulted in its direct cancellation and suspension of works until the settlement of the merits of the case, Law no. 119/ 2005 does not provide such consequence.

As amended, the law provides that suspension has to be decided by a court of justice, upon concerned parties' request.