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NUMBER 6

Government Decision no. 150/2011 regarding the amendment of the Methodological Norms of the Fiscal Codeⁱ

Corporate income tax

Tax Credit

Exemption method according to the Convention for the avoidance of double taxation will be granted to Romanian residents that have permanent establishments abroad in case documents are submitted to the Romanian tax authorities to prove that taxes were paid abroad.

Tax Payment

Taxpayers that paid during the first three quarters of 2010 at least once minimum tax should submit two corporate income tax statements (Form 101). The other taxpayers should submit only one corporate income tax statement.

Tax on dividends

For distributed dividends to Romanian parent companies, but unpaid until the end of the tax year, for which tax on dividends was withhold and paid, a reimbursement request may be filed by the Romanian payer with the tax authorities in case at dividend payment date the condition of maintaining at least 10% shareholding for at least 2 years was fulfilled.

Income tax

Freelancers' activities

Individuals, who obtain rental income from more than 5 rental agreements at year end, should determine the taxable income based on single entry bookkeeping starting the following tax year.

Taxpayers who opt to have the tax paid on their behalf by the income payer (through withholding method) should not determine the taxable income based on the single entry bookkeeping.

External Tax Credit

External tax credit for the income obtained and taxed abroad will be granted based on the calculations of the Romanian tax authorities.

Exemption method according to the Convention for the avoidance of double taxation will be granted in case Romanian resident individuals submit documents to the Romanian tax authorities to prove that taxes were paid abroad for that income.

Withholding tax on royalties paid to non-residents

New clarifications are made to the definition of royalties.

Payments made to the operator of satellites for using the capacity for transmission is not qualified as royalty in comparison with the situation when payments are made to the owner for rental of such equipment.

Payments made by telecommunication operators to other operators based on roaming agreements may not be qualified as royalties.

Payments made for projecting films and broadcasting movies are qualified as royalties.

VAT

Deemed supply

Leasing companies must self-assess VAT under the deemed supply rules in case of goods not returned in due time further to the termination of financial lease contracts. The taxable base is deemed to be the outstanding capital. In case goods are recovered at a later date, a correction is allowed.

In addition, various amendments are brought to situations in which goods are granted for the purpose of stimulating sales (falling under the “no supply” rule).

Transfer of assets

In case VAT is applied on transactions which should have fallen under the transfer of assets (“transfer of business as a going concern”) rule, input VAT deduction right is granted to the beneficiary provided that it is not a situation where the transaction was taxed for fiscal purposes.

Attention! The concept of “transactions taxed for fiscal purposes” is not defined. The provision presumably refers to abuse of law situations.

Place of supply

Granting of access to cultural, artistic, etc. events is understood as granting the right to enter an event further to acquiring a ticket or paying a tax (taxable at the place where such events actually take place). Fees for concerts, theatres, fairs are deemed as granting of access.

Deduction right

Input VAT deduction right is granted for acquisitions made from inactive taxpayers, further to the forced execution procedure, even if the supplier’s invoice does not contain a valid VAT number from the supplier.

In case of import transactions where the automated system for the processing of customs declarations is used, input VAT deduction is granted based on the hard copy of the customs declaration, certified by the stamp and signature of the customs inspector.

The Norms also detail the adjustments to be performed by entities which opt to re-apply the small enterprise exemption scheme, respectively by entities switching back from this scheme to the normal regime.

VAT return

Companies who opted for VAT de-registration are liable to submit their last VAT return by the 25th of the month in which their VAT number is annulled (regardless of the previously used reporting period).

Correction of self-invoices

Self-invoices are corrected similarly to invoices (i.e. through negative self-invoices).

Invoices issued by customers on behalf of suppliers

Customers are no longer required to be registered for VAT purposes in Romania in order to be able to apply this procedure. In case only one of the parties involved is registered for VAT purposes in Romania, the liability to notify the tax authorities refers solely to that part.

Excise duties

Cigarettes

The requirement of authorised warehouse keepers, registered operators and authorised importers of cigarettes to submit a monthly statement to the tax authorities regarding the deliveries made (by the 15th of the following month) is repealed.

Tobacco products

Authorised warehouse keepers, registered operators and authorised importers of processed tobacco must present on a monthly basis a situation with the processed tobacco products released for consumption. A template of the situation to be submitted is also provided.

Energy products

The decreased excise duty applicable for products which contain a minimum of 4% in biomass is repealed.

Social Contributions

Employers comprise also non-resident taxpayers (individuals and legal entities that do not have headquarters, domicile or residence in Romania) who, based on international agreements, are liable to pay social contributions for their employees to which Romanian laws on social contributions apply.

Entities assimilated to employers comprise all other entities that according to the law may hire personnel.

Income obtained by members of the board of directors, of the executive board, of the supervisory board and of the auditors' commission is subject to the social insurance contribution irrespective if the individuals are at the same time retired or employees.

Social contributions should be paid for the income obtained from performance of software development although such income is exempt of income tax.

Attention! The monthly base for calculating the social contributions to be paid by the employer generally takes into account the same base as in the case of social contributions due for the employee.

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