

JANUARY 25, 2013

Ordinance no. 8/2013 regarding the amendment of the Fiscal Code

The mentioned provisions enter into force starting February 1, 2013, except the provisions regarding the cigarette excise duty (applicable as of April 1, 2013).

Special provisions

The concept of “artificial transactions” is introduced, namely transactions without an economic substance and which cannot be usually utilized as part of normal economic practices, their scope being the avoidance of taxation or obtaining fiscal advantages which are otherwise not available.

Attention! The benefits of the conventions for the avoidance of double taxation cannot be claimed for artificial transactions.

Corporate income tax

Incentives

The quota of additional deduction applicable to eligible research and development expenses has been increased from 20% to 50%.

Non-deductible expenses

The following expenses are non-deductible:

- Depreciation expenses for passenger cars (which have up to 9 seats, including the driver’s seat), for the amount which exceeds 1,500 lei/month/car.

Attention! These provisions are also applicable to passenger cars acquired prior to the entry into force of the current limitation.

- Expenses registered into the accounting records, regardless of their nature, subsequently proven as linked to corruption cases.

External fiscal credit

The corporate income tax paid abroad is allowed as a deduction from the corporate income tax due in Romania only in the year, which such taxes refer to.

Attention! If the tax paid abroad, allowed for deduction, exceeds the payable tax of the current year, the arising difference cannot be carried forward.

Tax on microenterprises' income

An income tax of 3% applies on a mandatory basis to all companies which meet the following cumulative conditions:

- they derive income, other than companies active in the following fields:
 - banking;
 - insurance and reinsurance, capital markets, with the exception of legal entities which act as intermediaries in these fields;
 - gambling, consultancy and management.
- they have derived income which has not exceeded the lei equivalent of euro 65,000;
- the share capital is not held by state or the local authorities.

For companies active in the excluded fields, the application of this regime is optional.

Companies which had a turnover lower than euro 65,000 at year-end 2012 are subject to the microenterprise regime starting with February 1, 2013. These companies must submit the following by March 25, 2013:

- the notification of the change in the taxpayer's record (Romanian "vector fiscal");
- the corporate income tax for the period 1-31 January 2013.

Newly established companies are subject to income tax by default.

Individual income tax

The portion of the per diem which exceeds 2.5 times the limit imposed for public institutions becomes taxable.

Income from forestry and fishery become taxable and the taxable base is extended for agriculture income.

The fiscal treatment applicable to dividend income is also applicable to amounts paid by a legal entity in connection to goods/services supplied to a shareholder in its personal benefit.

Social contributions

The portion of the per diem granted to employees which exceeds 2.5 times the limit imposed for public institutions becomes taxable with social contributions.

The situations in which non-resident employers are required to pay social contributions in Romania for their employees are regulated.

Withholding tax on non-residents' income

The 16% withholding tax has been extended to all types of income obtained by non-residents from Romania in connection to services rendered (with the exception of international transport services), regardless if such services are rendered in Romania or abroad. Previous provisions mentioned the applicability of the withholding tax solely on income connected to services rendered in Romania, as well as to management and consultancy services.

Attention! A 50% withholding tax is introduced on most types of income derived by non-residents from Romania, if such income is paid to a state with which Romania does not have an exchange of information instrument in place.

VAT

Chargeable event (moment of supply)

Rules regarding the chargeable event for the granting of rights in rem (e.x. usufruct, superficies) have been introduced. Such services are deemed as supplied at the date mentioned in the contract for performing the related payment.

Taxable base

The taxable base is deemed to be the market value of the goods/services, for supplies between related parties in certain circumstances when the supplier and/or the beneficiary does not have a full input VAT deduction right. By market value it is entailed:

- for goods – an amount which is not less than the acquisition price of the good or similar goods or, in absence thereof, the cost determined at the moment of the supply;
- for services – an amount which is not less than the full costs connected to rendering the service.

Exemptions

The VAT exemption for rent out of real estate is also applicable for the granting of rights in rem over immovable properties (e.g. usufruct, superficies).

Adjustment of input VAT deduction

Adjustments of input VAT deduction must be performed also for goods, other than capital goods, which are missing inventory or stolen.

For stolen goods, regardless if they qualify as capital goods or not, the performed adjustment may be annulled at the date when the theft is legally proven based on a final and irrevocable court decision.

Electronic storage of invoices

For the electronic storage of invoices, the provision of Law no. 135/2007 regarding the electronic archiving of documents are not mandatory.

Cash based system

For situations in which the registration/deregistration of taxable persons in/from the registry of entities which apply the cash based system has occurred due to errors, both suppliers and beneficiaries benefit from the most favourable VAT treatment until such errors are rectified.

The registry of intra-community operators

Companies registered within the registry of intra-community operators are liable to submit with the tax authorities the fiscal records of the new administrators and/or shareholders (which hold more than 5% of the share capital) within 30 days from the date when changes occur. In case of non-compliance, tax authorities will remove the company in question from the registry of intra-community operators.

Excise duties*Coffee*

The excise duties paid for products which are withdrawn from the market may be reimbursed upon request, if their state or age makes them improper for consumption or they no longer fulfil the requirements for being sold.

Beer

Non-harmonised excise duties are introduced for beer/beer mixed with non-alcoholic beverages, for which the percentage of Plato degrees from malt, malted and/or un-malted cereals is less than 30% of the total number of Plato degree. The level of the excise duty is 10 euro/hl. The excise duty applied for exported or intra-community supplied goods shall be reimbursed upon request.

The level of harmonised excise duties applied for beer is increased from 0.748 euro/hl to 0.8228 euro/hl, respectively from 0.43 euro/hl to 0.473 euro/hl for independent producers with an annual production capacity below 200,000 hl.

Fermented beverages

Non-harmonised excise duties are introduced for fermented beverages, other than beer or wine, in which the proportion of pure alcohol (100%) derived from the exclusive fermentation of fruits, fruit juices and concentrated fruit juices is below 50%. The level of the excise duty is 25 euro/hl.

The excise duty applied for exported or intra-community supplied goods shall be reimbursed upon request.

Cigarettes

The increase of the excise duty on cigarettes will take place starting with April 1 of each year (as compared to July 1 previously applicable). These provisions enter into force starting April 1, 2013.

Contraventions

The utilisation of excise duty exempt alcohol for other purposes than the one for which the exemption has been granted is a contravention, for which a fine between RON 20,000 – 100,000 applies.

Local taxes

The local tax increase mentioned in GD no. 1309/2012 is mandatory for local authorities which registered arrears (debts) as of December 31, 2012.

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