

# Brief Review of the Provisions of the Fiscal Code on Transfer of Real Estate Properties Belonging to Personal Patrimony

Lately, the Romanian Fiscal Code suffered numerous amendments, which created certain controversies regarding the taxation modality. In practice, such repeated amendments generated confusion among both taxpayers and the representatives of the public administration. This article is only meant as a brief comparative presentation of the provisions of the Fiscal Code in force as of 1 January 2007 regarding the income obtained from the transfer of real estate properties belonging to the personal patrimony, by comparing them with the provisions preceding the date 1 January 2007. Be advised that with respect to the income obtained from the transfer of real estate ownership from the patrimony of certain legal entities, taxation shall be made according to the tax on global income of such business entity

Thus, by 1 January 2007, according to the provisions of art. 77<sup>1</sup> paragraph (1) corroborated with the provisions of art. 77<sup>2</sup> paragraph (1), the income obtained from the transfer of the ownership right over whatever type of construction and the land related thereto, which is alienated within maximum 3 years as of its acquiring

date inclusively, and the income obtained from the transfer of the ownership right over any kind of land acquired subsequent to 1 January 1990, are taxable by applying a 10% tax rate to the taxable income. Mention should be made that by taxable income obtained from the transfer of real estate properties, it is understood the favorable difference between the alienation value of the real estate properties and their basic (purchase) value.

The former legal provisions provided for the following exceptions from above-mentioned rule: (i) the contribution in kind to the share capital of the business entities; (ii) the income obtained by alienating the real estate properties acquired further to the re-establishment of the ownership right; (iii) the income obtained further to the alienation of the real estate properties acquired by inheritance or donation between relatives up to the fourth degree inclusively; (iv) the income obtained further to the alienation of the real estate properties acquired based on a real estate exchange. Currently, according to art. 77<sup>1</sup> paragraph (1) letter a), upon any transfer of the ownership right (or dismemberments thereof), by means of inter vivos legal deeds, over whatsoever

type of constructions with the lands related thereto and over any kind of land without construction, acquired within maximum 3 years inclusively, the taxpayers owe a tax that is calculated in a different manner, according to the value of the transferred asset.

Thus, if the value of the transferred asset is up to RON 200,000 (two thousand) inclusively, the tax rate to be applied to the transfer shall be 3% of the value of the transferred asset. If the value of the transferred asset exceeds the threshold of RON 200,000 (two thousand), the tax to be applied shall be calculated as follows: a fixed amount of RON 6,000 (six thousand) plus a variable amount of 2% calculated from the value of the immovable, that exceeds RON 200,000 (two thousand). In case of transfer of the ownership right (or of its dismemberments) related to the above-mentioned immovable assets, which were however acquired at a date prior to the 3-year term, the tax calculation modality is also depending on the value of the alienated asset. Thus, in case of transfer of the ownership right over the assets whose value does not exceed RON 200,000 (two thousand) inclusively, the tax due by the taxpayer shall be cal-

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culated by applying a 2% rate of the value of the transferred asset. If such threshold is exceeded, i.e. RON 200,000 (two thousand), the tax to be applied shall be calculated as follows: a fixed amount of RON 4,000 (four thousand) plus a variable amount of 1% calculated from the value of the immovable, that exceeds RON 200,000 (two thousand).

To conclude, the tax for the income obtained from transfer of the ownership right over the immovables belonging to the personal patrimony is currently calculated according to the value of the immovable, such being something new as compared to the previous provisions according to which the tax was only applied to the favourable difference between the alienation value of the real estate properties and the basic (purchase) value thereof. With respect to amendments to the Fiscal Code, we notice that in the current form of the Fiscal Code, provisions were inserted, regarding the tax levied upon transfer of dismemberments of the ownership right. Mention should be made that the dismemberments of the ownership right are those main real rights resulting from the separation of the prerogatives constituting the ownership right (possession, use and disposition). In its pre-

vious form, the Fiscal Code contained no express provisions on the transfer of such dismemberments, but only on the transfer of the ownership right as such. The taxation modality related to the income obtained from the transfer of dismemberments of the ownership right is identical to the one applicable



in case of transfer of the ownership right, the presentation of which may be found below.

**I**n addition, mention should be made that the new provisions also bring amendments with respect to the situations regarding transfer of ownership right that were exempted from taxation. Thus, the income obtained from the sale of immovable assets, even if such were alienated after a period exceeding 3 (three) years as of the date of their acquirement, and the income obtained from real estate exchange are no longer deemed as exceptions, constituting taxable income. The contribution in kind to the share capital of a company consisting in an immovable is also subject to taxation.