

18 February 2014

Fiscal Bulletin



Summary:

1. **Government Ordinance No. 77/2014 amending and supplementing the Methodological Norms for the application of Law No. 571/2003 regarding the Fiscal Code**

Amending and completing the Methodological Norms for the application of the Fiscal Code

Government Decision No. 77/2014 amending and completing the Methodological Norms for the application of the Law No. 571/2003 regarding the Fiscal Code was published in the Official Gazette No. 108 dated 12 February 2014.

The most significant provisions, applicable starting with 12 February 2014, unless otherwise stated, are presented herein below:

1. Corporate income tax

“Assignment of receivables” is now regulated and deductibility right is granted for expenses recorded in account 654 - “Bad debts written-off”, representing the difference between the assigned receivables’ nominal value and their acquisition price.

The requirements (i.e. fiscal residency certificate, statement regarding the corporate income tax paid in another jurisdiction, documentation attesting the fulfillment of the minimum shareholding conditions) for dividend income received from abroad to be considered non-taxable in Romania have been defined. Furthermore, the Methodological Norms have been aligned with the new provisions regarding the minimum holding period (i.e. from 2 years to 1 year).

The computation example related to the tax credit to be received by entities granting sponsorships has been updated to be in line with the newly implemented carry-forward and deductibility mechanism for sponsorship expenses, in force as of 1 January 2014.

The Methodological Norms provide examples for the corporate income tax computation methods, payment and declaration schedule for taxpayers that choose a fiscal period different from the calendar year.

2. Income tax on micro-enterprises

The Methodological Norms are correlated with the newly introduced conditions for micro-companies as of 1 January 2014, limiting the revenues from consultancy and management activities up to 20% of total revenues recorded. Exceeding the 20% threshold entails leaving the enterprises' income tax system.

Furthermore, the Methodological Norms regarding taxable base structure have been updated, as follows:

- The taxable base now includes trade discounts received subsequent to the invoicing, while the trade discounts granted prior to invoicing are no longer considered taxable;
- Revenues from subsidies are no longer taxable;
- The taxable base the 4th quarter of the fiscal year shall include the net difference between revenues from and expenses with foreign exchange.

3. Withholding tax

The Methodological Norms provide clarifications in respect of the term “international transport” (i.e. in line with the OECD commentaries) stating that it also includes the auxiliary services that cannot be separated from the actual transport activity. Moreover, it is now highlighted that services rendered by an international transport company between domestic destinations in Romania does not constitute international transport activity.

The Methodological Norms are updated to be in line with the conditions for tax exemption of dividends paid by Romanian companies to non-resident companies regarding the minimum holding period for at least 10% of the share capital in the Romanian subsidiary which is reduced from 2 years to 1 year.

4. VAT

Further clarifications are brought regarding the criteria to be considered in determining whether a person is acting in an independent manner from a VAT perspective, by the implementation of the decision of the European Court of Justice in Case C-202/90 *Ayuntamiento de Sevilla against the toll Recaudadores de las Zonas primera y segunda*.

The Methodological Norms are correlated with the recent amendments brought to the Fiscal Code regarding the VAT cash accounting system, applicable as of 1 January 2014, namely the introduction of the possibility to apply or not the system and, respectively, the abolition of the obligation to collect VAT on the 90th day after the invoice date.

Following the implementation of the decision of the European Court of Justice in Case C-224/11 *BGZ Leasing sp.z.o.o.*, it is further clarified that the recharge of the insurance cost, under lease contracts, is considered a separate transaction i.e. exempt from VAT.

For the purpose of adjusting the VAT base, it is mentioned that the cancellation of a contract intervenes when the parties withdraw from the contract as an agreement or as a

result of a legal court or arbitration court decision. At the same time, additional clarifications are brought regarding the cancellation of the contract in respect of supplies of goods and, respectively, supplies of services.

The Methodological Norms are correlated with the with the recent amendments brought to the Fiscal Code regarding the reimbursement of value added tax to taxable persons not established and registered for VAT purposes in Romania, for which the proof of VAT payment is no longer required. Importantly, invoices issued between 1 January 2009 - 31 December 2013 which were not paid totally / partially may be included in a VAT claim for reimbursement to be filed until 30 September 2014.

5. Excise duty

For the coffee products subject to excise duty and for the products that have become excisable from 1 September 2013 (jewelry, furs, yachts, hunting weapons, etc.), it is stated that when delivered under a contract of consignment, the chargeability of the excise duties for the consignor occurs when the goods are delivered by the consignee to its customers.

In the case of the products resulted by mixing beer with soft drinks, excise duty computation will take into account the sugar concentration corresponding to the beer base mixed with soft drinks.

Clarifications are brought related to the own consumption of authorized economic operators in the electricity sector, for which they must issue a self-invoice and pay the corresponding excise duty.

The arrival procedure for excise goods under exemption or suspension regime becomes more flexible (the term for storage of the goods at reception point is reduced from 48 hours to 24 hours).

The Methodological Norms mention receiving and storage of the excisable goods used (previously "acquired") as a raw material are allowed in a production fiscal warehouse. From the new wording, it is clear that the possession of raw materials in a production fiscal warehouse is allowed, regardless of the owner of such materials.

To benefit from the direct exemption for natural gas or electricity used for purposes exempt from excise duty, users must file a notification with the customs authority starting with 1 April 2014.

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