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Legal Bulletin



Environmental Law

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Methodology for the calculation of contributions and taxes owed to the Environment Fund (the “Methodology”)

Order No. 149/2019 on the amendment and supplementation of the appendix to Order No. 578/2006 of the Minister of Environment and Water Management approving the Methodology for the calculation of contributions and taxes owed to the Environment Fund was published in the Official Gazette of Romania, Part I, No. 156 of 27 February 2019 (“**Order No. 149/2019**”). The enactment became effective on the date of its publication. This enactment seeks to transpose and detail the amendments made to GEO No. 196/2005¹ and Law No. 249/2015² by GEO No. 74/2008³, Law No. 131/2009⁴, as well as to transpose certain amendments made to GEO No. 196/2005 by Law No. 143/2018⁵.

¹ Government Emergency Ordinance No. 196/2005 on the Environment Fund.

² Law No. 249/2015 on the management of packaging and packaging waste.

³ Government Emergency Ordinance No. 74/2018 amending and supplementing Law No. 211/2011 on the treatment of waste, Law No. 249/2015 on the management of packaging and packaging waste and Government Emergency Ordinance No. 196/2005 on the Environment Fund.

⁴ Law No. 31/2019 on the approval of Government Emergency Ordinance No. 74/2018 for the amendment and supplementation of Law No. 211/2011 on the regime of waste, Law No. 249/2015 on the management of packaging and packaging waste and Government Emergency Ordinance No. 196/2005 on the Environment Fund.

⁵ Law No. 143/2018 on the approval of Government Emergency Ordinance No. 48/2017 for the amendment and supplementation of Government Emergency Ordinance No. 196/2005 on the Environment Fund.

The main legislative amendments / supplementations are as follows:

1. Contribution to the circular economy

Order No. 149/2019 introduces the concept of contribution to the circular economy which, under Article 9(1)(c) of GEO No. 196/2005, is incumbent on the owners or, as the case may be, the managers of deposits for municipal, construction and demolition waste to be disposed of by depositing (the “Circular Contribution”)⁶. In accordance with Appendix No. 2 to GEO No. 196/2005, such Circular Contribution is RON 30/ton in 2019 and RON 80/ton as of 2020.

Further, this normative act brings some clarifications, as follows:

- The equivalent value of the Circular Contribution is borne by the individual or the legal entity handing over the aforementioned waste for final disposal;
- The Circular Contribution is owed for municipal, construction and demolition waste, “including temporarily stored waste”, handed over for final disposal by depositing;
- The Circular Contribution is not owed for the municipal, construction and demolition waste which was “transferred from temporary municipal waste towards deposits for final disposal”;
- It provides how the Circular Contribution is calculated when, within the deposit, there is an authorized plant for the waste handed over for sorting operation;
- The administrative-territorial units or, as the case may be, the administrative-territorial subdivisions of municipalities, and the interregional associations, respectively, must include the Circular Contribution in the waste management fees, within the limit of the quantities of municipal waste to be disposed of by depositing, corresponding to the performance indicators provided by Law No. 211/2011⁷, as well as to establish that sanitation operators are to bear the Circular Contribution for the quantities of deposited municipal waste which exceed the amounts corresponding to the performance indicators provided in the contracts.

2. The contribution amounting to RON 2/kg regulated by Article 9(1)(d) of GEO No. 196/2005 for packaging waste

As regards this matter, a series of provisions were added, transposing the significant amendments set forth in Law No. 249/2015⁸ related to:

⁶ The obligation was provided by GEO No. 74/2018 and subsequently amended by Law No. 31/2019.

⁷ Law No. 211/2011 on the regime of waste.

⁸ The amendments were made to Law No. 249/2015 by GEO No. 74/2018 and by Law No. 31/2019, as applicable.

- The categories of economic operators indicated under Article 16(1)(a) of Law No. 249/2015 who have an obligation to declare and pay the contribution to the Environment Fund amounting to RON 2/kg, as provided by Article 9(1)(d) of GEO 196/2005;
- The right of the above-mentioned economic operators to comply with the obligations regarding extended producer responsibility:
 - individually, by **managing their own packaging** placed on the national market; and/or
 - by means of an organization implementing the obligations concerning extended producer responsibility (“OTR”);
- The correlative obligation of economic operators and OTRs to implement the obligations regarding extended producer responsibility for each type of material and type of packaging, i.e. primary, secondary and transport packaging;
- The categories of packaging that extended responsibility should be ensured for. In this respect, Section 8 of Order No. 149/2019 details the categories of packaging provided under Article 16(7) of Law No. 249/2015.

Also, for the purpose of implementing the amendments regarding reusable packaging brought to Law No. 249/2015, the following obligations are also provided:

- Obligation to enter in the accounting records the reusable packaging “*which is returned to internal and external providers*”, into distinctive inventories accounts, at a fair value;
- Obligation to enter in the accounting records the amount of the money deposit set out in Article 10(2) of Law No. 249/2015 of RON 0.5/package for reusable primary packaging, with volumes ranging from 0.1 l to 3 l, used for products destined to consumers, starting 31 March 2019.

The new enactment also establishes a series of new provisions, such as:

- Defining the concept of “quantity of packaging waste handed over for valorising by recycling” as “weight of the packaging waste undergoing a recycling operation in which such waste is reprocessed into products, materials or substances”;
- Obligation of economic operators to ensure the recording of packaging waste management with the observance of the provisions of Decision 2000/532/CE⁹. The previous version of the Methodology set out an obligation to keep a record by reference to Article 1 of Government Decision No. 856/2002 on keeping a waste management record and approving the list of waste, including hazardous waste.

⁹ Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.

- Detailing the concept of “placing on the market” in Appendix No. 1 regarding:
 - persons that may carry out operations for placing on the market;
 - the cases when it may be deemed that certain products were placed on the market or not. As an example, it is provided that the products manufactured for an economic operator that affixes its name, trademark or another distinctive sign on the product, in order for it to be placed on the market and/or placed in service in Romania on its behalf, are deemed to have been placed on the national market by the latter¹⁰.
- 3. The contribution amounting to RON 2/kg regulated by Article 9(1)(v) of GEO No. 196/2005 for packaging waste managed by OTRs**

As regards the said OTRs, for the purpose of implementing the amendments brought to Law No. 249/2015, the following are expressly indicated:

- OTRs are the organizations to be authorised by the commission established as per Law No. 211/2011¹¹ for every type of material and type of primary, secondary and transport packaging (Article 67 of the Methodology);
- OTRs have an obligation to distinctively prepare monthly and annual reports for primary, secondary and tertiary packaging, as well as for the valorised waste.

In addition, Order No. 149/2019 defines the notion of “quantity of packaging waste handed over for recovery by recycling” identically to the concept detailed in section 2 above, and at the same time, provides that the aforementioned concept of “placing on the market” is also applicable as regards the contribution presented herein.

4. The contribution regulated by Article 9(1)(w) of GEO No. 196/2005 for Electrical and Electronic Equipment (“EEE”)

As regards this matter, Order No. 149/2019 transposes the deadlines extended by two years indicated in Article 9(1)(w) points 1 and 2 of GEO 196/2005 (as such Article was amended by Law No. 143/2018) - deadlines in consideration of which the contributions owed by economic operators for the EEE placed on the market should be paid, as follows:

- For the period 1 January 2017 - 31 December 2019 (deadline extended by 2 years) the annual contribution provided by letter (w), point 1 is applicable; and
- Starting 1 January 2020 (deadline extended by 2 years) the annual contribution provided by letter (w), point 2 will become applicable.

Moreover, the normative act provides for an extended term starting with which the economic operators placing EEE on the national market should perform the obligations

¹⁰ A similar provision was previously mentioned in Appendix 1 letter z) of Law No. 249/2015.

¹¹ The regulation for the functioning of this committee is detailed in Section II below.

set out in Article 80 of the Methodology for the cases they decide to comply with their annual collection obligations by transferring responsibility to a collective organisation, according to Article 25(6)(b) of GO No. 5/2005¹² (as of 1 January 2020 - deadline extended by two years).

5. The contribution regulated by Article 9(1)(x) of GEO No. 196/2005 for portable batteries and accumulators

As regards this matter, Order No. 149/2019 transposes the deadlines extended by two years indicated in Article 9(1)(x) points 1 and 2 of GEO 196/2005 (as such Article was amended by Law No. 143/2018) - deadlines in consideration of which the contributions owed by economic operators for portable batteries and accumulators placed on the market should be paid, as follows:

- For the period 1 January 2017 - 31 December 2019 (deadline extended by 2 years) the annual contribution provided by letter (x), point 1 is applicable; and
- Starting 1 January 2020 (deadline extended by 2 years) the annual contribution provided by letter (x), point 2 will become applicable.

As a result of the application of the deadlines mentioned above, a similar deadline extension was granted for the economic operators' obligations of managing portable batteries and accumulators placed on the market (e.g., the monthly declarations and reports concerning the quantities placed on the market and collected):

- For the period 1 January 2017 - 31 December 2019 (deadline extended by 2 years) the obligations provided by Article 84 of the Methodology are applicable; and
- Starting 1 January 2020 (deadline extended by 2 years) the obligations provided by Article 87 of the Methodology will become applicable.

Moreover, the normative act provides for an extended term starting with which the economic operators placing portable batteries and accumulators on the national market should perform the obligations set out in Article 90 of the Methodology for the cases they decide to comply with their annual collection obligations by transferring responsibility to a collective organisation, according to Article 7(7) of GD No. 1132/2008¹³ (as of 1 January 2020 - deadline extended by two years).

6. The contribution regulated by Article 9(1)(y) of GEO No. 196/2005 for EEE, as well as portable batteries and accumulators

Order No. 149/2019 transposes the deadline extended by 1 year indicated in Article 9(1)(y) of GEO 196/2005 (as this article was amended by Law No. 143/2018), which establishes, starting 1 January 2020, the contribution owed by:

¹² Government Emergency Ordinance No. 5/2015 on waste electrical and electronic equipment.

¹³ Government Decision No. 1132/2008 on the regime of batteries and accumulators, and waste batteries and accumulators.

- Collective organisations that undertook responsibility to manage EEE waste according to Article 25(6)(b) of GO No. 5/2005; and
- Collective organisations that undertook responsibility to manage waste portable batteries and accumulators according to Article 7(7) of GD No. 1132/2008.

Furthermore, the new deadline is transposed also in respect of such collective organisations' declaration and payment obligations, as detailed in Article 96(c)-(d) of the Methodology.

7. Amendments for a uniform terminology

In order to ensure a uniform interpretation by reference to the new form of Law No. 294/2015 and of Law No. 211/2011, Order No. 149/2019:

- Redefines the concepts of “packaging waste”, “placing a product on the national market” and includes the definition of “making available on the national market” - by reference to the definitions provided in Appendix 1 to Law No. 294/2015;
- Redefines the concept of “recycling” by reference to the definition provided in Law No. 211/2011 (as amended by GEO No. 74/2018);
- Replaces the concept of “deposit system” by “guarantee-return system” (while maintaining the previous definition).

For the same reason, the change in terminology brought to Article 9(d) and (v) of GEO No. 195/2006 under Law No. 143/2018 was transposed, so as to determine the contribution of RON 2/kg due by economic operators, or OTRs, respectively, as a difference between:

- The packaging waste quantities corresponding to annual recovery targets, and
- The packaging waste quantities “handed over for recovery” (the former version before Law No. 143/2018 dealt with “actually recovered” quantities).

Supervisory Commission for Extended Producer Responsibility (the “Commission”)

Order No. 64/2019 approving the specific structure and the operating rules of the Supervisory Commission for Extended Producer Responsibility was published in Official Journal of Romania, Part I, No. 161 of 28 February 2019 (“Order No. 64/2019”). The enactment entered into force on the publication date.

Order No. 64/2019 was issued further to the amendments brought to Article 12 of Law No. 211/2011 and Article 16 of Law No. 249/2015 by GEO No. 74/2018, which provide authorising and supervising the implementation of collective fulfilment of the

obligations on extended producer responsibility, by means of a dedicated commission to be established by an order.

According to this enactment, the Commission shall be established within the Ministry of Environment and shall have the following primary duties:

- To authorise, annually endorse, revoke the right to operate for organisations implementing the obligations on extended producer responsibility according to the normative act applicable to specific waste flow (OTRs);
- To ensure the proper framework required to supervise the organisations implementing obligations on the extended producer responsibility schemes, for an efficient operation thereof; and
- To request any information and/or documents relevant in terms of how the organisations implementing obligations on the extended producer responsibility schemes are conducting the authorised activity.

In addition, Order No. 64/2019 details how Commission meetings are convened and conducted, how votes are cast, requirements on the contents of letters and any other documents which may be sent by the Commission to applicants or other authorities. Furthermore, it describes the manner in which the authorisation and annual endorsement files are managed by the Commission Secretariat and the Commission itself.

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Environmental Law and Permitting are two of the niche practice areas of Romanian and EU law in which Țuca Zbârcea & Asociații's attorneys have gained unique expertise by handling some of the most complex projects undertaken so far in Romania in the mining sector, energy and oil & gas, as well as in the steel industry. Our services cover all procedural steps to be undertaken before the competent authorities (city halls, local environmental authorities, Ministry of Environment, Water and Forests, etc.) in relation to complex procedures such as IPPC, BAT, environmental impact assessment procedures, issuance of city planning certificates, public debates and environmental organisations, cross border environmental procedures, etc. Also, our services include advice on the environmental aspects of projects such as mergers and acquisitions, partnerships, long term exploitation contracts etc. and drafting and negotiating environmental agreements for the separation of environmental liabilities, both historical and forthcoming.



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