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Clients&FriendsAlert

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AMENDMENT AND COMPLETION OF THE METHODOLOGICAL NORMS FOR THE IMPLEMENTATION OF LAW NO. 571/2003 ON THE FISCAL CODE

Dear Clients and Friends:

We inform you that the following Decisions have been published in the Official Gazettes no. 534/30.07.2010 and no. 542/03.08.2010:

- Decision no. 791 for the amendment and completion of the Methodological norms for the implementation of Law no. 571/2003 regarding the Fiscal code, approved by Government Decision no. 44/2004, as well as for the approval of the Methodological norms for the application of the provisions of art. III from Government Emergency Ordinance no. 58/2010 for the amendment and completion of Law no. 571/2003 on the Fiscal code and other financial and tax measures, following the publication of Government Emergency Ordinance 58/2010;
- Decision no. 768 for the amendment and completion of the Methodological norms for the application of Law no. 571/2003 regarding the Fiscal code, approved by Government Decision no. 44/2004, following the publication of Emergency Ordinance no. 54/2010.

I. Decision no. 791 for the amendment and completion of the Methodological norms for the application of Law no. 571/2003 regarding the Fiscal code, approved by Government Decision no. 44/2004, as well as for the approval of the Methodological norms for the applications of the provisions of art. III from Government Emergency Ordinance no. 58/2010 for the amendment and completion of Law no. 571/2003 regarding the Fiscal Code and other financial and tax measures

I.1 Amendments of the Methodological norms for the application of Law no. 571/2003 regarding the Fiscal code

Title I – “General provisions”

In relation to article 7, point 2.1 of the Fiscal Code, the Norms clarify that the activities carried out independently which give rise to income from liberal professions, such as copyrights and related rights as defined by Law no. 8/1996 regarding copyrights and related rights, as further amended and completed, *may not be considered dependent activities*.

The reassessment of the records, performed by the tax authority with the view of reflecting the market price of goods and services, is also performed for the other affiliated person concerned.

Title II – “Tax on profit”

Minimum tax

The provisions of article 18(2) of the Fiscal Code regarding the obligation to pay the minimum tax do not apply to the taxpayers who have declared, on their own responsibility, that *they do not carry out any activities at the registered office/secondary offices*, such cases being registered in the records of the competent courts.

The Norms provide for a new example regarding the quarterly corporate income tax/minimum tax computations, as well as the corresponding year-end adjustment.

Corporate income tax

The provisions according to which “the expenses incurred with a view of obtaining taxable income are expenses related to the manufacture and trade of goods, performance of services or performance of works, including the ones regulated by the laws in force” are repealed.

The expenses with services incurred in relation to the efficiency, optimization, operational and/or financial restructuring of the taxpayer’s activity are also considered expenses incurred with the view of obtaining taxable income.

Expenses representing losses of value of the participation titles due to accounting valuation are not deductible for corporate income tax purposes.

International taxation aspects

In the situation in which a Romanian legal entity obtains income/profit which, in compliance with the provisions of the convention for the avoidance of double taxation, is subject to taxation in the foreign country, the method set forth in the convention, *i.e.* the credit method or the exemption one, as the case may be, shall be applied in order to avoid the double taxation.

Title III - “Income Tax”

The non-taxable income does not include the allowance granted to a disabled person in the event in which the employer is not able to provide for a substitute for the personal assistant, according to the law.

Income from independent activities

The income from liberal professions also includes income from activities which are carried out independently, according to the law, as regulated professions, including the situation in which the activity is carried out based on an agreement, for *companies or other entities regulated according to the law* to carry out activities which generate income obtained from liberal professions.

The income from intellectual property rights assimilated to income from independent activities shall be defined only according to the provisions of Law no. 8/1996.

Additional clarifications are made as to the definition of the term *reorganization in the context of an independent activity*. In addition, it is mentioned that, in case of the reorganization of an activity, when the destination of the goods is not maintained, the equivalent value of the goods and rights in the patrimony of the business which is subject to the reorganization, is also included in the net income of the business.

In case of individual taxpayers who carry out an independent activity as *an individual undertaking*, the net income may be also determined based on annual income norms, with the observance of the legal provisions.

Investment income tax

The Norms detail the provisions of the Fiscal Code regarding the method of computation of the tax on the gain obtained from the transfer of securities, other than shares in limited liability companies or non-listed companies.

Other tax measures

Taxpayers who cancel *the lease agreements* during the fiscal year are liable to notify the competent tax authority in writing within 5 days. Additionally, they shall submit a copy of the documents evidencing the cancellation of the lease agreements (i.e., the affidavit).

The Norms set forth that the rules for the determination of the net income from independent activities shall be applied also in case of a *civil company with legal personality*, set up in accordance with the special law and subject to the tax transparency regime.

Natural persons obtaining income from an activity carried out by means of an organization form with legal personality (SPRL) established according to the special law, have the obligation to assimilate such distributed income to the annual net income from independent activities.

International tax aspects

The income obtained by individuals from countries with which Romania *has not concluded conventions for the avoidance of double taxation* from dependent activities carried out in Romania and paid by resident or non-resident employers is subject to taxation in Romania *starting from the first day in which the activity is carried out*, in the same manner as the income obtained by natural persons who do not evidence the residency in a state with which Romania has concluded a convention for double taxation avoidance.

Additional clarifications are brought with regard to the documents that have to be submitted with a view to *adjusting the tax* due by a resident in the event that the same salary income is subject to taxation both in Romania and abroad, the foreign state having the taxation right according to the convention for the avoidance of double taxation.

Transitory provisions

Additional clarifications are brought related to the manner to *recompute the income norms* by the general directions of public finances in the event that the *net income from independent activities*, determined based on the income norm, is lower than the minimum base salary at the national level multiplied by 12.

For 2010, upon determining the net income/loss related to each period spanning between 1 January-30 June, respectively 1 July-31 December 2010 for *the income from intellectual property rights*, the gross income, the lump-sum expense share and the mandatory social contributions paid, related to each period, shall be taken into consideration, the net income for 2010 being determined by adding up the net income determined for each of the two periods.

Title V – “Tax on the income obtained in Romanian by non-residents and tax on the representative offices of foreign companies in Romania

In order to apply the provisions of the conventions for the avoidance of double taxation, a copy of the fiscal residency certificate, translated and certified by the authorized Romanian body shall be:

- Submitted with the company whose securities/shares/participation titles are transferred, in the event of proceeds from the transfer of securities in case of non-listed companies and from the transfer of shares, as well as in case of the transfer of the participation titles obtained by a non-resident person;
- Annex to the taxation statement, in case of non-resident natural persons who obtain proceeds from the transfer of securities, other than shares and securities in case of closed companies.

For the transfer of securities held by a non-resident natural person, performed through an intermediary, the obligation to compute and pay the tax on the gains obtained, as well as other declarative obligations fall on the *non-resident beneficiary or the fiscal representative/empowered person appointed by the beneficiary*. The *agent* shall have to fulfill his obligations according to article 66, paragraph (6) of the Fiscal Code (the calculation of the proceeds/loss for each transaction, the conveyance of the information regarding the proceeds/losses recorded to the taxpayer for each quarter, the annual submission with the competent fiscal body of an informative statement regarding the total proceeds/losses for the transactions performed, for each taxpayer).

Title VI – “Value added tax”

Additional clarifications are brought with respect to the fact that persons obtaining income from activities which are considered dependent according to the extended definition provided under article 7 may not be considered as acting independently in the meaning of the value added tax.

Title IX – “Local duties and taxes”

A calculation example related to the tax on buildings for 2011, in case of an apartment which represents the first building besides the one/ones located at the domicile address, owned by a natural person, is introduced, as well as examples for the determination of the tax in case of ownership of several buildings.

The new model of the special statement for determining the increased tax on buildings, valid before 1 July 2010, is hereinafter introduced.

The Norms present the manners to determine the additional tax for the taxpayers who have fully paid the tax due according to the prior provisions to the coming into force of the new tax computation regulations in case of ownership of several buildings.

I.2 Methodological Norms for the implementation of the provisions of article III of Government Emergency Ordinance no. 58/2010 for the amendment and completion of Law no. 571/2003 on the Fiscal Code and other financial and fiscal measures

Professional income refers to the income obtained by a natural person from any other activities other than the ones defined as dependent according to article 7(1), point 2 of the Fiscal Code, activities which are carried out by such person outside an employment relationship, except for the cases set forth under the law (i.e., income from giving up the use of goods, from investments, from pensions, from agricultural activities, from awards and gambling, from the transfer of real estate).

The persons who obtain *only* professional income, both in case of *recurrent* ones and in case of *occasional* ones, owe individual social security contributions, unemployment insurance contributions and health insurance contributions.

The persons who, in addition to the wages, obtain *recurrent* professional income (monthly, quarterly or half-yearly) also owe individual contributions for such income. The persons who obtain such *occasional* income, and who also receive wages, do not owe individual contributions for the occasional professional income.

Computation base

Social security and unemployment insurance contribution:

- *In case of professional income having a recurrent nature*: net monthly income, but not more than the equivalent of 5 national gross average salaries,
- *In case of professional income obtained occasionally*: the net annual income, but not more than the equivalent of 5 national gross average salaries,

Health insurance

- The net amount of the *monthly* professional income, as the difference between the net income and the related deductible expenses, limited to 5 national gross average salaries, but not less than a national minimum base salary. Such payment shall be made by the person who obtains them, in compliance with the provisions of Law no. 95/2006.

Declarative obligations

- A statement regarding the insurance in the public pension system and in the unemployment system shall be submitted once, by the 25th day of the month for the previous month in which the income was obtained, respectively a health insurance contract shall be concluded. The term for submitting the statements is the same as the contribution payment term.
- The persons who obtain *recurrent* professional income are obliged to update the statements within 14 business days from the amendment date of the amount of the professional income, by submitting new statements attesting the amount of these income types, obtained in relation to each income source. For the months in which such income is not obtained, this fact must be notified to the territorial pension house, as well as to the employment agency of each county or of the city of Bucharest where they domicile or reside.
- The persons who obtain professional income only occasionally submit the insurance statements *whenever* the income is obtained, by the 25th day of the month for the prior month in which they have obtained the income. The individual contributions shall be due until the date when the amount of the professional income obtained during the calendar year reaches the limit of 5 national gross average salaries. The submission term set forth shall be the same as the contribution payment term.

Contributory period

- It shall be determined by applying to the contributory period the report between the individual social security/unemployment contribution share and the social security contribution share approved for the work places in normal conditions/contribution share due to the unemployment insurance budget by the insured person pursuant to the unemployment insurance agreement.

In the event that professional income is no longer obtained, there is the obligation to notify such fact to the territorial pension house, as well as to the employment agency of each county or of the city of Bucharest where the person domiciles or resides, within 3 business days from the occurrence date thereof.

II. Decision no. 768/2010 for the amendment and completion of the Methodological norms for the implementation of Law no. 571/2003 on the Fiscal Code

Value added tax

- Explanations and examples are added as to the value added tax applicable in some temporary situations generated by the modification of the VAT unique quota:
 - If the events set forth under article 138 of the Fiscal Code (with respect to the adjustment of the taxation base – full or partial annulment of the operation, full or partial refusals, price reductions, etc.) occur after 1 July 2010, the applicable quota for adjusting the taxation base is the quota of the basic operation which generated such events. As to the intra-community purchases of goods, the applicable quota for adjusting the taxation base is the quota in force upon the date when the exigibility of the tax occurred (according to article 135 of the Fiscal Code). If the intra-community

- purchase which generated such events cannot be determined, the VAT quota in force upon the date when the event occurred shall be applied.
- In the event of recharging the expenses within the commissioner structure, it shall be deemed that the generator fact occurs upon the date when the invoice is issued by the person who recharges the expenses incurred for other persons. Thus, in the event that the recharge occurs after 1 July 2010, the VAT quota applicable by the taxable person in Romania is equal to 24%;
 - Clarifications are also made as to the adjustment of the advance payments received before 1 July 2010, of the invoices for the performance of continuous services (e.g., electric energy) or for services which may trigger deductions or successive payments.
- b) The register of intra-community operators – further information is added as to the registration procedure. Thus, the taxable persons settled or not in Romania (in the meaning of Title VI – Value added tax, of the Fiscal Code), which are not established pursuant to Law no. 31/1990, do not have the obligation to submit the criminal record with a view to being registered in the Register of intra-community operators.

Excises

- The list of the documents to be submitted before the production, sale or use of products as heating fuel or engine fuel is extended. Thus, the economic operator, other than the authorized warehouse operator, shall also have to submit the copy of the registration certificate with the trade registry office, the findings certificate evidencing the object of activity of the economic operator, the confirmation of the fiscal body as to the capacity of the economic operator which pays the excise and the environmental permit/approval;
- Amendments are made as to the registration of the economic operators authorized in the field of natural gas, in the field of coal and lignite extraction and charred coal production, as well as the ones authorized in the field of electric energy. Thus, the registration thereof shall no longer be performed at the central customs authority (as defined by the Norms), but at the specialty direction which secures the secretariat of the Commission (referred to as central tax authority);
- Clarifications are made as to the products which may be stored in the excise suspensive regime. Thus, the storage in the excise suspensive regime of products used as raw material and of excisable products resulting from the production activity is allowed in the fiscal production warehouse. The storage in the excise suspensive regime of excisable products resulting from the production activity for which the tax warehouse was authorized is allowed in case of the fiscal storage warehouse of a warehouse operator which is authorized for production or of a person affiliated thereto;
- The documentation and the procedure for the authorization as registered receiver of the economic operators which already have an authorization of final user is set forth;
- The list of the documents to be submitted together with the authorization request as registered sender is extended;
- Clarifications are made as to the level of the guarantee to be established by the authorized warehouse operator which also holds the capacity of registered sender. Thus, it shall have the obligation to establish the guarantee both in the capacity as authorized warehouse operator and in the capacity as authorized sender.

We hope that you will find the above matters useful. Should you have additional questions, please do not hesitate to contact us.

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