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In Monitorul Oficial al Romaniei nr. 621/29.08.2012 a fost publicata Ordonanta Guvernului nr. 15/2012 pentru modificarea si completarea Legii nr. 571/2003 privind Codul fiscal.

Principalele prevederi sunt:

Impozit pe profit
Pierderea fiscala inregistrata de contribuabilii care isi inceteaza existenta ca efect al unei operatiuni de fuziune sau divizare se recupereaza de catre contribuabilii nou-infiintati ori de catre cei care preiau patrimoniul societatii absorbite sau divizate, dupa caz, proportional cu activele si pasivele transferate persoanelor juridice beneficiare, potrivit proiectului de fuziune/divizare (pana acum nu se permitea recuperarea pierderii fiscale). Prevederea se aplica incepand cu 1 octombrie 2012.

Taxa pe valoarea adaugata
S-a introdus sistemul de TVA la incasare, respectiv exigibilitatea taxei intervine la data incasarii contravalorii integrale sau partiale a livrarii de bunuri ori a prestarii de servicii.

Sistemul se aplica obligatoriu de persoanele impozabile care au realizat in anul precedent o cifra de afaceri in valoare de pana la 2.250.000 lei.

TVA la incasare se aplica numai pentru operatiuni pentru care locul livrarii sau locul prestarii se considera a fi in Romania.

Daca persoanele care aplica sistemul de TVA la incasare nu au incasat contravaloarea integrala sau partiala a livrarii de bunuri ori a prestarii de servicii in termen de 90 de zile calendaristice de la data emiterii facturii, exigibilitatea taxei aferente contravalorii neincasate intervine in cea de-a 90-a zi calendaristica, de la data emiterii facturii.

In situatia in care factura nu a fost emisa in termenul prevazut de lege, exigibilitatea taxei aferente contravalorii neincasate intervine in cea de-a 90-a zi calendaristica de la termenul-limita prevazut de lege pentru emiterea facturii.

Se precizeaza situatiile in care nu se aplica sistemul de TVA la incasare. Printre acestea este cazul livrarilor de bunuri/prestarilor de servicii a caror contravaloare este incasata, partial sau total, cu numerar, cazul livrarilor de bunuri/prestarilor de servicii pentru care beneficiarul este o persoana afiliata furnizorului/prestatorului, etc.

Pentru determinarea taxei aferente incasarii contravalorii integrale sau partiale a livrarii de bunuri ori a prestarii de servicii, fiecare incasare totala sau partiala se considera ca include si taxa aferenta aplicandu-se urmatorul mecanism de calcul pentru determinarea sumei taxei, respectiv 24 x 100/124, in cazul cotei standard.

Dreptul de deducere a TVA aferente achizitiilor efectuate de o persoana impozabila de la o persoana impozabila care aplica sistemul TVA la incasare este amanat pana in

Government Ordinance no 15/2012 for amending Law no. 571/2003 regarding the Fiscal Code, was published into Official Gazette no 621/29.08.2012.

The main provisions are as follows:

Corporate tax
Fiscal loss recorded by taxpayers who cease to exist as a result of a merger or division should be recovered by newly created taxpayers or by those who take the patrimony of the absorbed or divided company, as appropriate, proportional to the assets and liabilities transferred to the beneficiaries legal persons, according to the draft merger / division (until now recovery of fiscal loss was not allowed). Provision should be applied starting 1 October 2012.

Value added tax
It was introduced the VAT cash system, under which chargeability of tax occurs on full or partial cashing of delivery of goods or the rendering of services.

The system is applicable by the taxpayers who obtained in the last calendar year a turnover up to RON 2,250,000.

VAT cash system applies only to transactions where the place of delivery or the place of supply is deemed to be in Romania.

If persons who apply VAT cash system did not collect the whole or part of the supply of goods or the provision of services within 90 calendar days from date of invoice, the VAT chargeability occurs in the 90th calendar day from date of invoice, with regard to the value unpaid.

If the invoice has not been issued within the term provided by law, the VAT chargeability occurs in the 90th calendar day from the legal date for issuing the invoice, with regard to the value unpaid.

There are provided examples where VAT cash system do not apply. Among them we mention supply of goods / rendering of services for which payment is received, partially or totally, with cash, for supply of goods / rendering of services for which the recipient is affiliated to supplier / provider, etc.

To determine the VAT related to cashing the value of goods delivered or of rendering of services in full or in part, each full or partial cashing it is considered to include the VAT for which the following mechanism will apply for the determination of the amount of VAT, ie 24 x 100/124, at the standard rate.

The right to deduct VAT on purchases made by a taxable person from a taxable person applying VAT cash system is delayed until the VAT for goods and services that have momentul in care taxa aferenta bunurilor si serviciilor care i-au fost livrate/prestate a fost platita furnizorului/prestatorului sau.

Pentru exercitarea dreptului de deducere a taxei de catre persoanele care aplica sistemul de TVA la incasare trebuie in afara de factura sa detina si dovada platii.

Persoana impozabila care aplica sistemul TVA la incasare are obligatia sa depuna la organele fiscale competente, pana la data de 25 ianuarie inclusiv, o notificare din care sa rezulte ca cifra de afaceri realizata in anul precedent nu depaseste plafonul de 2.250.000 lei (pentru aplicarea de la data de 1 ianuarie 2013 a sistemului de TVA la incasare notificarea se depune pana la data de 25 octombrie 2012 din care sa rezulte cifra de afaceri din perioada 1 octombrie 2011 – 30 septembrie 2012). Daca persoana impozabila nu depune notificarea, persoana va fi inregistrata din oficiu de organele fiscale competente in Registrul persoanelor impozabile care aplica sistemul TVA la incasare.

Persoana impozabila care aplica sistemul TVA la incasare si care depaseste in cursul anului calendaristic curent plafonul de 2.250.000 lei are obligatia sa depuna la organele fiscale competente, pana la data de 25 inclusiv a lunii urmatoare perioadei fiscale in care a depasit plafonul, o notificare din care sa rezulte cifra de afaceri realizata.

Sistemul de TVA la incasare se aplica de la 1 ianuarie 2013 daca sunt indeplinite conditiile privind cifra de afaceri.

Se stabileste ca locul prestarii serviciilor de inchiriere a unui mijloc de transport, cu exceptia inchirierii pe termen scurt, inclusiv serviciile de leasing de mijloace de transport, catre persoane neimpozabile, va fi locul unde clientul este stabilit, isi are domiciliul stabil sau resedinta obisnuita. Prin termen scurt se intelege o perioada de maxim 30 de zile (prevederea intra in vigoare incepand cu 1 ianuarie 2013).

Pentru livrarile intracomunitare de bunuri, exigibilitatea taxei intervine la data emiterii facturii, autofacturii, ori in cea de-a 15-a zi a lunii urmatoare celei in care a intervenit faptul generator, daca nu a fost emisa nicio factura/autofactura. Pentru avansurile incasate pentru livrari intracomunitare nu mai este obligatorie emiterea de facturi.

Se definesc facturile ca fiind documentele sau mesajele pe suport hartie ori in format electronic, daca acestea indeplinesc conditiile stabilite de lege.

Se introduce posibilitatea emiterii facturilor simplificate daca valoarea facturilor, inclusiv TVA, nu este mai mare de 100 euro. Facturile simplificate trebuie sa contina un numar minim de informatii prevazut de lege.

Se standardizeaza anumite informatii care trebuie sa apara pe facturi. Astfel, in cazul in care clientul este persoana obligata la plata TVA se mentioneaza pe factura “taxare inversa” sau in cazul in care exigibilitatea TVA intervine la data incasarii contravalorii integrale sau partiale a livrarii de bunuri ori a prestarii de servicii se mentioneaza “TVA la incasare”, etc.

Utilizarea facturii electronice face obiectul acceptarii de catre destinatar.

been delivered / rendered has been paid to the supplier.

To exercise the right of deduction of VAT by persons applying VAT cash system it should hold besides invoice and proof of payment.

Taxable person applying VAT cash system is required to submit to tax authorities, up to 25 January inclusive, a notification stating that the turnover of the previous year does not exceed the threshold of RON 2,250,000 (for application as of 1 January 2013 of the VAT cash system notification have to be submitted until 25 October 2012 stating the turnover in the period 1 October 2011 - 30 September 2012). If the taxpayer does not submit the notification, the person will be recorded by default by the tax authorities in the Register of taxable persons applying VAT cash system.

Taxable person applying VAT cash system that exceeds during a calendar year the threshold of RON 2,250,000 is required to submit to tax authorities until the 25th of the month following the tax period in which it exceeded the threshold, a notification which states the realized turnover.

VAT cash system applies as from 1 January 2013 if the conditions regarding turnover are fulfilled.

It is stated that the place of supply of rental services for a means of transport, except for short term rental, including leasing services for means of transportation, to non-taxable persons, shall be the place where the customer is established, it has his permanent address or usual residence. Short term means a maximum of 30 days (the provision comes into force from 1 January 2013).

For intra-community deliveries of goods, VAT chargeability occurs on the date of invoice, selfinvoice, or on the 15th day of the month following the month in which the event occurred, if it was not issued any invoice / selfinvoice. For advances received for intra-community supplies is not mandatory to issue invoices.

The invoices are defined as documents or messages on paper or electronically, if they meet the conditions required by law.

It is provided the possibility to issue simplified invoices if the value of invoices, inclusive of VAT, it is not higher than 100 euro. Simplified invoices must contain a minimum of information as required by law.

It is provided certain information that must appear on invoices. Thus, if the client is liable to pay VAT on the invoice should be mentioned "reverse charge" or if VAT chargeability occurs on full or partial cashing of delivery of goods or rendering of services should be mentioned "VAT at cashing ", etc.

Using electronic invoice shall be subject to acceptance by the recipient.

Autenticitatea originii, integritatea continutului si lizibilitatea unei facturi, indiferent ca este pe suport hartie sau in format electronic, trebuie garantate de la momentul emiterii pana la sfarsitul perioadei de stocare a facturii. Aceasta se face prin controale de gestiune sau prin semnatura electronica avansata sau schimb electronic de date (EDI).

Impozit pe venit

Platitorii persoane juridice sau alte entitati care au obligatia de a conduce evidenta contabila **nu mai au obligatia de a calcula, de a retine si de a vira impozit prin retinere la sursa**, reprezentand plati anticipate, din veniturile platite pentru activitatile desfasurate in baza contractelor/conventiilor civile incheiate potrivit Codului civil obtinute de contribuabilii care desfasoara activitati economice in mod independent sau exercita profesii libere si sunt inregistrati fiscal potrivit legislatiei in materie (Prevederea intra in vigoare incepand cu 1 septembrie 2012).

Contributii sociale

Se precizeaza clar ca persoanele care sunt asigurate in alte sisteme proprii de asigurari sociale neintegrate in sistemul public de pensii (ex. avocati) datoreaza contributia de asigurari sociale doar la aceste sisteme proprii de asigurari sociale.

Platitorii de venit nu calculeaza, nu retin si nu vireaza ei insusi contributiile sociale pentru contribuabilii persoane fizice care desfasoara activitati economice in mod independent sau exercita profesii libere si sunt inregistrate fiscal potrivit legislatiei in materie.

Ca exceptie, platitorii de venit calculeaza, retin si vireaza contributiile sociale pentru persoanele fizice care realizeaza venituri in baza contractelor de agent.

Se aduc clarificari cu privire la salariatii care au obligatia depunerii declaratiei D 112 si platii contributiilor sociale obligatorii, in situatia in care se obtin venituri din salarii de la angajatori straini din state terte care nu au incheiate cu Romania acorduri sau conventii in domeniul securitatii sociale, sau de la angajatori nerezidenti, din statele Uniunii Europene care potrivit instrumentelor juridice internationale la care Romania este parte, datoreaza in Romania contributiile sociale obligatorii.

Prevederile legate de contributii sociale intra in vigoare incepand cu 1 septembrie 2012.

Authenticity of origin, integrity of content and legibility of an invoice, whether it is on paper or electronically, must be guaranteed from the moment of issue until the end of the storage period of the invoice. This is done by management controls or advanced electronic signature or electronic data interchange (EDI).

Income tax

Legal person incomepayers or other entities that are required to manage accounting do not have the obligation to calculate, withhold and transfer tax by withholding at source, for advance payments from income paid for activities conducted under contracts / civil conventions concluded under the Civil Code obtained by taxpayers carrying out economic activities independently or liberal professions and are tax registered according to specific legislation (This provision comes into force starting 1 September 2012).

Social contributions

It is clearly stated that persons who are insured in other social insurance systems which is not integrated in the public pension system (eg lawyers) are liable to social insurance contribution only to their own social security systems.

Income taxpayers do not calculate, do not withhold and do not pay themselves social contributions for freelancers who perform economic activities independently or for liberal professions which are registered under tax legislation.

As an exception, income payers calculates, withhold and pays social security contributions for individuals which obtain incomes under agent contracts.

There are provided clarification regarding employees who have to submit the declaration D 112 and have to pay social security contributions when they obtain salary income is obtained from foreign employers from third countries which have not concluded with Romania agreements or conventions on social security, or from non-resident employers from EU countries which according to international legal instruments to which Romania is part, are liable to pay social contributions in Romania.

Provisions relating to social contributions take effect as from 1 September 2012.

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