Newsletter BG CONTA

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I. Government Decision 791/2010 for amending the Norms to the Fiscal Code, was published in Official Gazette 542/03.08.2010.

The main provisions are as follows:

Definitions

✓ An activity may be reconsidered as dependent activity, if the activity does not reflect its economic substance.

Activities carried out independently to generate freelance income, and copyright-dependent activities can be reconsidered as dependent activities.

Transfer pricing

✓ It is extended to apply the arm's length principles for transactions between Romanian related persons.

To reflect the arm's length price of goods and services, reconsideration (adjusting revenues and expenditures) will also be done to the other affiliated person. To establish arm's length price of transactions between related companies generally accepted transfer pricing guidelines, issued by the Organization for Economic Cooperation and Development will be used. It is detailed for certain types of expenses the criteria that must be met for their deduction in calculating corporate tax.

Corporate tax

✓ Expenses with services targeting efficiency, optimization, operational and/or financial restructuring of taxpayer's activity are expense made for realization of incomes.

✓ Expenses representing loss in value of participating titles, due to decreasing in value of share capital to companies that participating titles are hold or as a result of valuations made according to accounting regulations, are non-deductible expenses in calculating taxable profit.

✓ Dividends distributed and paid to a Romanian legal person, after January 1, 2007, even if they are distributed from profits of financial years prior to 2007, they are not taxed if the beneficiary of dividends owns on the dividend payment date, minimum 10% of participating titles of the other legal person for a period of two years ending on the date when the dividend is paid.

Income tax

✓ It is defined the" *reorganization*" of independent activities.

✓ For individual taxpayers who perform an independent activity as an individual enterprise, net income can be determined based on annual income norms, with respect to art. 49 of the Fiscal Code.

- ✓ Are included in salaries meal vouchers, childcare vouchers, gift vouchers, holiday vouchers, as well as compensation payments and aids, granted under special laws. Tax base is their nominal value and are taxed in the month in which they are received.

- ✓ It is set the base on which the 16% tax rate applies interest incomes.

- ✓ It is provided the recalculation methods of income norms based on annual net income from independent activities for the period July 1 to December 31, 2010 and of annual net income for the income from intellectual property rights.

- ✓ It is detailed the fiscal regime applicable to incomes from dependent activities obtained by non-resident individuals and clarifications are made regarding the fiscal credit granted in cases in which Conventions for avoidance of double taxation are applied.

II. Government Decision 768/2010 for amending the Norms to the Fiscal Code, was published in Official Gazette 534/30.07.2010.

The main provisions are as follows:

Value added tax

- ✓ When adjusting the tax base, as provided under art. 138 of the Fiscal Code, after 1 July 2010, the rate applicable to adjust the tax base is the VAT rate of the initial operation which generated the events.

- ✓ However, if the initial operation could not be determined, it will be applied the VAT rate in force at the date the event occurred.

- ✓ When VAT rate will change an adjustment will be made to apply the rates in force on delivery of goods or rendering of services for cases provided under art. 134^2 alin. (2).

  - For example, a company received in June 2010 an advance for goods to be delivered after July 1, 2010. In this case, on the date the chargeable event occurs (i.e. delivery date of goods) the initial advance invoice will be reversed using 19% VAT and the final invoice for the full consideration of goods will be issued applying the 24% VAT rate, currently in force.

  - For work statements accepted in July for works performed in June, the applicable VAT rate for full consideration of the services accepted by the beneficiary is 24%. If previous to issuing the work statements advance invoices have been issued using the 19% rate, after July 1, 2010 such advances shall be reconciled by applying the 24% rate.

- ✓ When applying commissioner structure the chargeable event for re-invoiced operations occurs on the date the invoice is issued, by the person who re-invoices incurred expenses to other persons (if reinvoicing would take place in July 2010, the applicable VAT rate by taxable person in Romania is 24%).

- ✓ For intracommunity acquisitions of goods if VAT rates are changed no reconciliations are made in order to apply the VAT rate when chargeability event occurs, the applicable VAT rate being the one in force when the chargeability of VAT occurs (15th day of the month following the month in which the event occurred).

Excise duties

Clarifications were made regarding:

- ✓ possibility of storing excisable products in duty suspension regime, in other places than those approved as fiscal production warehouses;
- ✓ places where additive or mixed with biomass energy products operations could take place;
- ✓ guaranty calculation for fiscal production warehouses and of registered senders;
- ✓ documents required to renew warehousekeepers;
- ✓ application of transitional provisions, for storage fiscal warehouses to which the license expires on September 1, 2010;
- ✓ cases for refunding the excise duties for excisable products delivered for export, due to dissolving the storage fiscal warehouses;
- ✓ there were presented the necessary documents to be submitted to Authorization Commission for classifying of other energy products, depending on their destination;
- ✓ there were reviewed details regarding the exemption from excise duty payment for energy products used for other purpose than fuel usage or in specific areas;
- ✓ there were reviewed the documentation necessary to authorize the economic operators as registered recipients, registered senders, licensed importers or end users of excisable products;
- ✓ details were provided for cases to revoke authorizations for registered senders and authorized importers;
- ✓ clarifications were made to the regime of fiscal documents related to excisable products released for consumption.