

TAX ALERT



NEWSLETTER | No. 15 - 29 June 2010

Summary:

- **Further amendments to the Tax Code** (GEO 58 / 26 June 2010)
- **New measures to combat tax evasion**
(GEO 54 / 23 June 2010)
- **Approval of the procedure for the organisation and operation of the Register of Intra-Community Operators**
(Order 2101 / 24 June 2010)

FURTHER AMENDMENTS TO THE TAX CODE

Monitorul Oficial al Romaniei No. 431 / 28 June 2010 has published Government Emergency Ordinance No. 58 / 26 June 2010 which amends and supplements Law No. 571 / 2003, regarding the Tax Code, and introduces other financial and tax measures (hereinafter referred to as the “Ordinance”).

The major provisions of the Ordinance cover the following:

- ▶▶ The **VAT standard rate has been increased from 19% to 24%**;
- ▶▶ The **tax rate on dividends** granted by a Romanian legal entity to its shareholders that are Romanian legal entities has grown from 10% to **16%**.
- ▶▶ Amendments have been brought to the deduction of the tax paid abroad and the deduction of the tax loss recorded via a permanent establishment located in another State.
- ▶▶ Tax authorities may reclassify any activity as being a **dependent activity**, provided that at least one of the conditions set out by the Ordinance is met. When an activity is reconsidered to be dependent, the income tax and the mandatory social security contributions, determined in compliance with law, shall be recalculated and paid accordingly by both the income taxpayer and the income beneficiary.
- ▶▶ **Copyrights** and related rights are defined under Article 7 headlined “Definitions of Common Terms.”
- ▶▶ The flat tax on the expenses which are deductible upon the computation of the annual net income obtained from intellectual property rights has been cut down from 40% to 20% of the gross income, while in the case of income achieved from the creation of monumental works of art from 50% to 25% of the gross income.
- ▶▶ **With reference to the salary-related rights of July 2010, the taxable salary income** shall also include the following amounts / salary-related rights granted to employees:
 - gift vouchers granted in compliance with law
 - childcare vouchers offered in accordance with law
 - vacation vouchers granted under law
 - meal tickets offered in accordance with law
 - compensatory payments granted in compliance with lawThe legal provisions of special laws, regarding exemption from the payment of compulsory social security contributions, continue to be in force.
- ▶▶ Credited interest is no longer considered non-taxable and a **16% tax rate shall be applied to the income obtained from such interest on:**
 - sight deposits / current accounts of resident and non-resident natural persons
 - customer deposits made under collective saving and credit legislation
 - income deriving from savings made in Romania by natural persons who are residents of European Union Member States
 - fixed term deposits and/or savings instruments of both Romanian residents and non-residents, irrespective of the established legal relationship.The income obtained from such interest shall be subject to taxation as of 1 July 2010, regardless of the established legal relationship.
- ▶▶ The tax rate, the procedure for the declaration and payment of tax on the income obtained from the transfer of securities other than shares and securities of close companies, just as the procedure for tax loss carry-forwards have been modified. Such tax rate is **16%**, irrespective of the period over which securities are held.

- ▶▶ The anticipatory tax on the proceeds obtained from buying or selling foreign currency under contract and any other similar foreign exchange operations has been rated at **16%** from 1%.
- ▶▶ The tax on gambling winnings has been capped at **25%**, irrespective of the net income.
- ▶▶ The calculation basis of social security contributions in the case of professional income other than salary-related income has been limited to five (5) gross average salaries per the national economy used for the substantiation of the social security fund.
- ▶▶ Non-resident natural entities performing dependent activities in Romania will be subject to taxation in compliance with Title III – “Income Tax” of the Tax Code from the very first day of commencing their activity in Romania.

The new tax provisions shall apply as of 1 July 2010, except for the cases in which the Ordinance provides otherwise.



New Measures to Combat Tax Evasion

Monitorul Oficial al Romaniei No. 421 / 23 June 2010 has published Government Emergency Ordinance No. 54 / 23 June 2010, regarding certain measures to combat tax evasion (hereinafter referred to as the “Ordinance”).

Please find below some of the provisions contained in this Ordinance.

1. Amendment of Law No. 571 / 2003, regarding the Tax Code

- ▶▶ A new article is added with reference to the creation and organisation of the **Register of Intra-Community Operators starting 1 August 2010**, which contains all the taxable entities and the non-taxable legal entities performing intra-Community operations.
- ▶▶ The entities that have already registered for VAT purposes, intending to perform intra-Community operations as of 1 August 2010, must apply for their registration in the Register of Intra-Community Operators, before performing any such operations.
- ▶▶ The applications for registration in the Register of Intra-Community Operators, to which supporting documents have to be attached, shall be filed with the competent tax authorities as of the publication date of this Ordinance.
- ▶▶ **The entities that are not recorded in the Register of Intra-Community Operators shall be deemed to have no valid VAT registration number for intra-Community operations even if they have registered for VAT purposes.**
- ▶▶ Several conditions are provided for registration in the Register of Intra-Community Operators and the competent tax authority may either approve or reject the application for registration under a decision which is to be communicated in accordance with the Tax Procedure Code. Such decision becomes effective as of its communication date.
- ▶▶ The **reverse charge mechanism** will also be applicable, as a simplified measure, to the delivery of goods such as **cereals, technical plants, vegetables, fruit, meat, sugar, flour, bread and pastries.**

This measure is to be applied until 31 December 2011 and comes into force as of the tenth day following the date on which the European Union Council communicates its approval of derogation for the application of these provisions. The approval communication date will be published on the official Website of the Ministry of Public Finance.

- ▶ Several amendments have been brought to **Title VII – Excise Duty and Other Special Taxes**.
- ▶ Starting 1 July 2010, the **excise duty on cigarettes** will be equal to the sum total of the specific excise tax and the *ad valorem* excise tax, being, however, no less than 96% of the total excise duty on cigarettes representing the minimum excise tax.
- ▶ Article 296¹ has been amended in respect to punishments which are now harsher for the purchase, use and sale of excisable products in defiance of the applicable legal provisions.
- ▶ New provisions have been introduced with regard to the obligation of certified bonded warehouse keepers to renew their authorisation.

2. Amendment of Government Emergency Ordinance No. 104 / 2002, regarding customs regulations for duty-free goods

- ▶ Goods will be sold at tax-free prices within the limits set for personal use.
- ▶ Goods sold at foreign currency prices by authorised duty-free shops in compliance with the applicable law shall be subject to export regulations.
- ▶ A list of goods which may be sold at tax-free prices is contained in the Appendix to the Ordinance.
- ▶ The annual fee payable by duty-free shops has been increased from EUR 10,000 to EUR 100,000 for each shop.
- ▶ The supporting documents of duty-free sales have been amended.
- ▶ Further provisions have been introduced with regard to duty-free sales.

3. Law No. 86 / 2006, regarding the Customs Code of Romania, has been amended inasmuch as several breaches of customs regulations are concerned

4. Amendment of Government Ordinance No. 92 / 2003, regarding the Tax Procedure Code

- ▶ Several provisions have been adopted in respect to **joint liability**.
- ▶ A new provision has been introduced with regard to the **obligation of credit institutions to notify the competent tax authorities, upon request, of the activity and/or balance of all the accounts opened with such institutions**, inclusive of the identification data of individuals having signature right, as well as of whether the debtor has rented safety deposit boxes.
- ▶ The provisions of articles regarding the capitalisation of attached assets have been amended.
- ▶ A new article regulates contraventions and punishments related to the Register of Intra-Community Operators; if any entity that has not been recorded in this Register performs intra-Community operations, such entity shall be punished with a fine.
- ▶ Provisions are introduced with reference to the findings of the tax bodies pertaining to the National Tax Agency (ANAF) and their collaboration with prosecution bodies.

5. **Law No. 31 / 1990 regarding companies has been amended**
6. **Law No. 241 / 2005 regarding the prevention of and fight against tax evasion has been amended in respect to related offences**
7. **Amendment of Government Emergency Ordinance No.195 / 2002 regarding public road traffic**
 - ▶▶ Tax bodies belonging to ANAF will be entitled to stop vehicle drivers for control purposes.

Approval of the procedure for the organisation and operation of the Register of Intra-Community Operators

***Monitorul Oficial al Romaniei* No. 429 / 25 June 2010 has published Order No. 2101 / 24 June 2010, which approves the Procedure for the organisation and operation of the Register of Intra-Community Operators, as well as of the model and content of some forms.**

The main provisions of the Order refer to the following:

- ▶▶ Approval of the procedure for the organisation and operation of the Register of Intra-Community Operators
- ▶▶ The Order approves the model and content of the below-mentioned forms:
 - Application for registration in / deregistration from the Register of Intra-Community Operators;
 - Decision regarding the registration / rejection of registration in the Register of Intra-Community Operators;
 - Decision regarding deregistration, upon request, from the Register of Intra-Community Operators;
 - Decision regarding deregistration, *ex officio*, from the Register of Intra-Community Operators;
 - Notice regarding changes in the list of shareholders and/or administrators.
- ▶▶ Approval of the instructions for filling in the abovementioned forms.

Tax Alert contains a selection of the latest major issues occurred in the Romanian legislative framework, is intended only to provide information and, hence, shall not be deemed to provide professional advice or consultancy.

Therefore, we assume no responsibility in this respect.

Should you require any information related to the foregoing, please do not hesitate to contact us.

Contacts:

Jean-Pierre VIGROUX - Managing Partner

Hubertus EICHLER - Partner, German & Austrian Desk

Gabriel SINCU - Partner, Head of Tax & Outsourcing Services

CONTACT

Mazars Romania

Str. Economu Cezarescu, nr. 31B
Sector 6, RO-060754
Bucharest, Romania

Tel: +40 31 229 26 00

Fax: +40 31 229 26 01

E-mail: contact@mazars.ro
www.mazars.ro / www.mazars.com