

TAX ALERT



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Amendments to the Methodological Norms for the Application of the Tax Code

The new legislative act substantially clarifies the conditions under which an activity may be reclassified from a tax perspective as being dependent, as well as the taxation of professional income other than the salary-related one. Practically speaking, the taxation base has widened, exerting major impact on the individuals obtaining income from independent activities and copyright.

SUMMARY

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Amendments to the Methodological Norms for the Application of the Tax Code

Monitorul Oficial al Romaniei No. 542 / 3 August 2010 has published Government Resolution No. 791 / 2 August 2010 amending and supplementing the Methodological Norms for the Application of Law No. 571 / 2003, regarding the Tax Code, approved under Government Resolution No. 44 / 2004, and endorsing the Methodological Norms for the Application of the Provisions of Article III of Government Emergency Ordinance No. 58 / 2010.

Amendment of the Norms for the Application of Title I - “General Provisions”

- ▶ Specific mentions are made of the **conditions under which an activity may be reconsidered in compliance with the criteria set forth under Art. 7 (1), point (2.1), of the Tax Code as being dependent**, i.e. in the case in which the legal relationship underlying such activity does not reflect its economic substance.
- ▶ When **transfer pricing** is subject to analysis and the records of an affiliate are adjusted by the tax authority so as to reflect the fair market price of goods and services, the records of the other affiliate shall also be adjusted.

Amendment of the Norms for the Application of Title II - “Profit Tax”

- ▶ **New examples are given of the computation of the quarterly and annual profit tax** in consideration of Article 18 of the Tax Code, introduced by Government Emergency Ordinance No. 22 / 2010, regarding the calculation of the quarterly profit tax and the adjustment of the annual profit tax by comparing it with the annual minimum tax.
- ▶ The **List of examples of expenses which are made for the purpose of achieving taxable income** is supplemented by expenses related to services aiming at rendering the business highly efficient, at optimising and restructuring such business from an operational and financial perspective.

Amendment of the Norms for the Application of Title III - “Income Tax”

- ▶ The income achieved from independent activities which are regulated as such under law, including contract-based activities performed by companies or other entities deemed by law to generate freelance income, is specified to be **freelance income**, too.
- ▶ The **income obtained from copyright and similar rights**, as defined under Law 8 / 1996, is considered to be freelance income.
- ▶ Independent activities performed in compliance with law, which generate freelance income, just as copyrights and related rights may not be reconsidered as dependent activities according to Art. 7(1), points (2.1) and (2.2).
- ▶ The value of meal **tickets**, crèche tickets, gift vouchers and holiday vouchers which are granted in compliance with law and are taken into consideration while determining the tax on salary income is the **nominal value**. Such income is charged as salary income in the month in which it is received.
- ▶ Specific references are made to the calculation base to which the 16% tax rate is applied in the case of the income resulting from interest, as well as to the method of calculation of the tax applied to the proceeds obtained from transfers of securities.

- ▶▶ The application of the Conventions for the Avoidance of Double Taxation and the taxation of income obtained from dependent activities performed by natural non-residents in Romania are clarified.
- ▶▶ Transitory provisions applicable in 2010 are regulated with regard to the recalculation of income standards applied to independent activities and the calculation of the annual net income obtained from intellectual property rights.

Amendment of the Norms for the Application of Title IV - “Microenterprises Income Tax”

- ▶▶ The Norms for the application of the aforesaid Title IV has been abrogated as it became inapplicable in 2010.

Amendment of the Norms for the Application of Title V - “Tax on the Income Obtained by Non-residents from Romania and Tax on Representative Offices Established in Romania by Foreign Companies”

- ▶▶ Provisions are introduced with reference to the taxation of income obtained from the interest applied to sight deposits / current accounts, term deposits, deposit certificates and other saving instruments, created as of 1 July 2010, at banks and other credit institutions authorised to operate in Romania.
- ▶▶ The norms for the application of the Conventions for the Avoidance of Double Taxation are also amended in the case of the gains achieved by non-residents from transactions of securities.

Amendment of the Norms for the Application of Title VI - “Value Added Tax”

- ▶▶ The amendment specifies that the person carrying on a dependent activity in compliance with Art. 7 of the Tax Code does not act independently in the meaning of Art. 127(3) of the Code.

Amendment of the Norms for the Application of Title IX - “Local Taxes and Fees”

- ▶▶ Details are given in relation to the method of calculation, declaration and adjustment of the **increased tax on buildings due and payable by the natural persons owning several buildings**.
- ▶▶ Specific reference is made to the **obligation** of any natural or legal entity that has acquired/ alienated his/her/its right of ownership over any transport means **to file tax returns** with the relevant department of the local public administration, irrespective of the duration of such ownership.
- ▶▶ The **calculation method for the difference of the tax on transport means** provided under Art. 263(2) of the Tax Code is referred to in detail.

Methodological Norms for the Application of Article III of Government Emergency Ordinance No. 58 / 2010:

- ▶▶ “**Professional income**” is defined.
- ▶▶ Any person achieving exclusively recurrent professional income, *i.e.* monthly, quarterly or half-yearly, or occasional income shall pay individual social security contributions, contributions to the unemployment fund and to the health insurance fund (referred to as “**individual contributions**”).
- ▶▶ Any person obtaining recurrent professional income, apart from salary income, shall also pay individual contributions for such professional income.

- ▶▶ Any person achieving occasional professional income, apart from salary income, shall pay no individual contribution for such professional income.
- ▶▶ These Norms regulate the calculation base of individual contributions to the social security fund and the unemployment fund in the case of recurrent professional income, of occasional income, respectively, the manner in which such contributions should be declared and the terms for their payment.
- ▶▶ The calculation base of the contribution to the health insurance fund is also regulated in the case of professional income, just as the manner in which such contribution should be declared and paid.

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.

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