

Tax Flash



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Amendments to the Norms of the Fiscal Code

Decision 84/2005 amending the Norms of the Fiscal Code, approved by Government Decision 44/2004 as amended by Decision 1840/2004

(Official Gazette 147/2005)

We have prepared below a note on certain significant changes brought
by the new amendments to the Fiscal Code Norms.

Profits tax

Deductibility of provisions

The new amendments clarify the meaning of financial difficulties, included
in the definition of deductible bad debt provisions as per the Fiscal Code.

Penalties

The Decision clarifies that late payment penalties and interests related to
contracts concluded with resident entities should be considered as
deductible expenses, or, respectively, taxable income.

In addition, late payment interest and penalties charged by a non resident
should be deductible if the applicable double tax treaty defines them as
interest.

Sponsorship expenses

The fiscal treatment of sponsorship expenses is clarified, namely, the
entire amount should be non deductible and if the thresholds established
by law (0.3% of the turnover or 20% of the profits tax) are exceeded, the
lowest amount should be allowed as fiscal credit.

Taxation of revaluation reserve

The revaluation surplus recorded as "Other reserves" or "Retained
earnings" becomes taxable for profits tax purposes only when its
destination is modified.

*This update is correct to the best of
our knowledge and belief at the time
of issue. It is, however, written as a
general guide so it is recommended
that specific professional advice is
sought before any action is taken.*

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Deductibility of interest and related expenses

The deductibility of interest expenses related to foreign currency loans, other than those obtained from financial institutions is capped at 7%, for the fiscal year 2005 (previously the cap was 9%).

Depreciation

The Decision defines specialized units through which partially depreciated goods should be sold in order for the capital loss to be deductible as:

- legal persons which according to their statute act as intermediary in selling of real estate and other fixed assets; as well as
- specialised departments within the seller.

The Decision reintroduces the principle previously mentioned in Decision 2/2003 regarding the fact that expenses with the write off of assets incompletely depreciated are incurred with a view to earning taxable revenues.

Dividends

The Decision abrogates the previous references (points 83 and 84) to the taxation of profits derived from liquidation of a company, share capital increase through own capital resources etc. as deemed dividends.

Permanent establishment

The decision clarifies on the documentation requirements for a permanent establishment (PE) of a non resident entity to deduct costs allocated by the headquarter.

Revenue from immovable property

Clarifications are provided with regard to computation of capital gains derived by foreign entities from Romanian immovable properties.

Incentives

Companies acting in disfavored zones are to be exempt for profits tax on the account of the certificate of investor in disfavored zones issued before 1 July 2003 (this date was previously set to 1 July 2002).

Income tax

Taxation of independent activities

The Decision reduces to 10% (from 15%) the tax quota to be withheld as anticipated payments by the payer of income related to intellectual property rights.

Salary Income

The Decision also provides for the computation method of the contributions to optional occupational pension schemes limited at EUR 200 per year.

A person would not qualify as being “in the care” of another if its revenues exceed ROL 2,500,000 per month.

Income tax return and special income tax returns

The Decision provides details on the type of statement to be submitted by individuals subject to income tax and the submission deadline.

Withholding tax

Computation of withholding tax

The conversion in ROL of the withholding tax denominated in foreign currency shall be made at NBR’s exchange rate valid for the day when the income was paid. In case of capitalised interest, the NBR’s exchange rate valid for the day when the interest was capitalized should be used.

Exemptions from withholding tax

The Decision provides examples in respect of receivable titles/instruments for which the interest is withholding tax exempt (e.g.:

- bonds issued in national or foreign currency;
- bills of exchange;
- other receivable instruments).

Application of double tax treaties

The Decision adds a new requirement in order for the provisions of double tax treaties to be applicable, i.e. the withholding tax should be borne by the supplier and not the Romanian company.

In addition, the Decision provides for the identification elements of a fiscal residency certificate.

Moreover, the provisions of the present Decision regarding the fiscal residency certificate are applicable for 2004 income obtained by a foreign beneficiary, if the delivery of the certificate of fiscal residency was made after the deadline imposed by the previous Norms (i.e. in 2004 or 2005).

Value added tax

Due payment

In case of import of goods placed under tax warehouse regime, the VAT related to the excise becomes due at the same time when the excise is due.

Taxation base

The fiscal invoice related to deliveries of goods paid in installments should contain the full amount of the payment as VAT base and the related VAT. An exception for this rule is made for deliveries of goods subject to simplification measures.

The Decision clarifies the understanding of the Fiscal Code in respect of the date when bankruptcy is declared for the purpose of adjusting the VAT basis: i.e. the date when the final court decision is issued for the closure of the business.

VAT deduction

The present provisions clarify the term “financial income” defined by the Fiscal Code as VAT exempt, as income from financial and banking operations, and not financial income as defined by the accounting regulations.

Special exemption regime

The Decision clarifies the computation of the threshold under which the special VAT exemption regime is applied. It provides that for the computation of this threshold the company should take into account the value of supplies of taxable goods and services, VAT excluded, including VAT exempt operations with deduction right, excluding from the computation advances cashed for such operations before the delivery of goods or performance of services.

Simplified measures

The Decision provides for the tax and accounting treatment for the operations subject to VAT simplification measures.

Inter-alia, the Norms details on the definition of buildings and part of buildings, as well as the application of the simplification measures in case advance payments are made for such transactions. The Norms refer also to the deductibility regime applicable to input VAT related to such transactions in case the beneficiary also performs transactions which are VAT exempt without deduction right, taking into account the destination of the goods subject to simplified VAT regime.

Excises

The Decision provides that the tax warehouse owners authorised to produce cigarettes or the companies authorised to import such products which do not perform any more such activities are liable to notify the fiscal authorities and to continue to fill in the declaration of retail maximal prices for additional three months.

Authorisation

The Decision provides details on the authorisation of tax warehouses for alcoholic drinks subject to marking system, tax warehouses for mineral oil production and duty free shops, including administrative liabilities for warehouses already authorised.

As per the present provisions, all tax warehouses for alcohol, distilled products and distilled alcoholic drinks should submit to the fiscal authorities an ISO 9001 certificate in a 12 months period from their authorization. Tax warehouses already authorised should submit the ISO 9001 certificate by 31 December 2005.

The Decision requires an environmental authorisation for a tax warehouse to be authorised. Tax warehouses already authorised should submit the environment authorisation to the tax authorities by 30 June 2005.

Titleholders of tax warehouses for mineral oil already authorised have to submit a list of products to the Customs National Authority by 1 March 2005.

Forms

New norms have been set up for transactions exempt from excises and for compensation/restitution of excises.

Marking

The new Norms added to the list of products which are not subject to marking three categories, namely:

- alcohol drinks with an alcohol content up to 6%
- local products destined to export;
- imported products, otherwise subject to marking, but with transit or temporary import regime.

Stamps and labels used for marking cigarettes and respectively intermediary products or ethylic alcohol will have additional identification elements.

Local taxes

The Decision provides computation guidelines for tax on buildings and detail on the definition of buildings.

It also provides that the local councils should establish the tax on buildings rate between 0.5% and 1%, within 45 days from the publication of the Decision.

Alienation/acquisition documents

The documents related to the alienation/acquisition of an ownership right regarding a building performed by legal persons must contain the acquisition value and the surface of the land on which the building is erected.

Leasing

The provisions of the norms related to the computation of excises for cars acquired through leasing arrangements are suspended until the enforcement date of a future law modifying the Government Ordinance 51/1997 regarding leasing. Customs authorities should reimburse the import rights paid in excess after Government Decision 1840/2004 was enforced (i.e. 28 October 2004).