



We inform you that in the Official Gazette no. 885 of 10.11.2017 was published Government Emergency Ordinance no. 79/2017 for amending and completing the Law no. 227/2015 regarding the Fiscal Code

Amended and supplemented by this Ordinance refer to:

PROFIT TAX

New terms are defined, such as: the costs of indebtedness /the excess costs of indebtedness, financial enterprise, transfer of assets, transfer of tax residence.

- 1. New rules have been introduced to limit the deductibility of interest expense and other costs equivalent to interest from an economic point of view.**

The excess costs of indebtedness are defined as the amount by which the cost of a taxpayer's indebtedness exceeds the interest income and other economically-incomes earned by the taxpayer.

Excess costs that exceed the deductible ceiling of 200,000 euros are deducted limited in the fiscal period in which they are incurred up to the level of 10% from a calculation base.

Calculation basis = (income and expense recorded in accordance with applicable accounting regulations, in the fiscal reference period) - (non-taxable income) + (income tax expense + excess costs of indebtedness + deductible amounts representing tax amortization).

When the calculation basis = 0 or <0, excess costs of indebtedness are non-deductible in the fiscal reference period and are reported, without the time limit, in the following tax years under the same deduction conditions.

If the taxpayer is an independent entity, respectively is not part of a consolidated group for financial accounting purposes, and has no associated enterprise and no permanent establishment, it fully deducts the excess costs of indebtedness in the tax period in which they are supported.

Interest and foreign exchange differences losses are reported under current deductibility rules are fully deductible.



2. New rules have been introduced regarding the tax regime for the transfer of assets, of tax residence and/or of economic activity carried out by a permanent establishment for which Romania loses the right to tax.

For transfers of assets, for tax residence and/or economic activity carried out by a permanent establishment, the taxpayer is subject to income tax, according to the following rules:

- a) It is determined the difference between the market value of the assets transferred in a taxable period and their tax value;
- b) if the difference (calculated according to item a)) represents a gain, a 16% rate is applied to it;
- c) if the difference [calculated according to a)] represents a loss, it is recovered from the profits generated by operations of the same nature from the taxable profits obtained over the next 7 consecutive years.

These rules apply to the following situations, in so far as, as a result of the transfer, Romania loses the right to tax transferred assets:

- a) the taxpayer transfers assets from its headquarters in Romania to its permanent establishment in another Member State or in a third country;
- b) the taxpayer transfers assets from its permanent establishment in Romania to its headquarters or to another permanent establishment from another Member State or from a third country;
- c) the taxpayer transfers his tax residence from Romania to another Member State or to a third State, except for those assets that are effectively connected with a permanent establishment in Romania;
- d) the taxpayer transfers the economic activity carried out in Romania through a permanent establishment to another Member State or to a third State.

The taxpayer that applying the above rules benefit from the rescheduling right the payment of this tax by payment in installments over five years, if the conditions set out in the Fiscal Procedure Code for installment payment are met and the transfer is made to an EU Member State or a State party to the European Economic Area Agreement.

3. It have been introduced provisions concerning the General Antibuse Rule

For determining the tax obligations, considering all relevant facts and circumstances, no demarche or a series of demarches that are not honest and undertaken for the main purpose of obtaining a tax advantage contrary to the object or purpose pursued by applicable tax provisions.

A demarche may involve several stages or parts.



Such demarches are considered not to be honest in so far as they are not undertaken for valid commercial reasons that reflect economic reality.

If a demarche or a series of demarches is not / are taken / taken into account, the tax liability regarding the profit tax is calculated.

4. There have been introduced new rules on controlled foreign companies (S CFC)

Foreign controlled companies are subject to specific provisions if the following conditions are met cumulatively:

a) the taxpayer, alone or together with its associated companies, owns:

- ✓ Direct or indirect participation of more than 50% of the voting rights or
- ✓ Owns directly or indirectly more than 50 per cent of the entity's capital
- ✓ Is entitled to receive more than 50% of the profits of the respective company

b) The tax on profits actually paid by the entity or permanent establishment for its profits is less than the difference between the corporation tax that would have been levied from the entity or the permanent establishment calculated in accordance with the provisions of the Tax Code (Title II) and the tax on the profit actually paid for its profits by the entity or by the permanent establishment.

The permanent establishment of a treated entity as a foreign controlled company is not taken into account if the head office is not subject to tax or is exempt from tax in the jurisdiction of the foreign controlled company concerned.

The provisions also apply to permanent establishments in a Member State / third country of a taxpayer paying a tax on profits, whose profits are not subject to tax or are exempt from tax in Romania.

If an entity or a permanent establishment is considered to be a foreign controlled company, the taxable income taxpayer controlling it shall include in the taxable base the undistributed revenue of the entity that derives from the following:

- a) interest or any other income generated by financial assets
- b) royalties or any income from insurance activities, banking activities or other financial activities
- c) dividends and income from the transfer of equity securities
- d) financial lease income
- e) income from insurance activities, banking activities or other financial activities
- f) income from companies that obtain them from goods and services purchased from associated companies and are sold to them without any added value or low added value.

The rules on controlled foreign companies do not apply if the controlled foreign company carries out a significant economic activity, supported by personnel, equipment, assets and premises, as



demonstrated by the relevant facts and circumstances, as well as when the foreign controlled company is resident or is located in a third country party to the EES Agreement.

Will not be considered as foreign controlled companies the following:

- a) the entity or the permanent establishment, if it records in a fiscal period revenues from the above mentioned categories, representing one third or less than one third of the total revenues registered during the fiscal calculation period;
- b) the financial enterprise which records in a tax period income of the above-mentioned nature, arising from operations with the Romanian taxpayer or its associated companies, representing one third or less than one third of the total revenues registered by the financial company.

For the avoidance of double taxation, if the entity distributes the taxpayer's profits and this distributed profit is already included in the taxable income of the taxpayer, the amount of the previously taxable income of the taxpayer is deducted in the tax period in which the amount of the tax due for the profit distributed.

For the avoidance of double taxation, if the taxpayer surrenders its holding in a controlled entity or the economic activity carried out through a permanent establishment and part of the proceeds of the disposal has previously been included in the taxable base of the taxpayer under this Article, decreases in the tax period in which the amount of tax due for the receipts is calculated.

The taxpayer deducts from the income tax due, the tax paid to a foreign state by the controlled entity or its permanent establishment.

TAX ON THE INCOME OF THE MICRO ENTERPRISES

The ceiling for the revenues of the micro enterprises is increased from 500,000 euros to 1,000,000 euros.

Taxpayers include all taxpayers who currently carry out activities that are currently exempted, and will apply to:

- ✓ Legal entities that receive consultancy and management revenues more than 20% of total revenues
- ✓ for Romanian legal entities that carry out banking, insurance and reinsurance activities and the capital market, gambling, etc.

There have been removed the provisions permitting an entity with a minimum share capital of 45,000 lei to apply by option the provisions of Title II "Profit Tax".

VALUE ADDED TAX

The competent tax authorities have the right to refuse V.A.T deduction if, after administering the evidence provided by law, they can show beyond any doubt that the taxable person knew or ought to



have known that the alleged operation to justify the right to deduct was involved in a V.A.T fraud that occurred upstream or downstream of the supply chain.

EXCISES AND OTHER SPECIAL TAXES

In the case of contraventional detention outside the fiscal warehouse or the sale on Romanian territory of excisable products subject to marking, without being marked or marked inappropriately or with false markings under the prescribed limits (i.e over the limit of 10,000 cigarettes, 400 cigarettes of 3 grams , 200 cigarettes of more than 3 grams, over 1 kg of smoking tobacco, alcohol over 40 liters, spirits over 200 liters, intermediate products over 300 liters, fermented beverages, other than beer and wine, over 300 liters) will also apply the sanction of confiscation of tanks, containers and means of transport used in the transport of excisable products

TAXES AND OTHER LOCAL TAXES

The Table on the tax on the means of transport for goods vehicles with a total authorized weight of 12 tonnes or more, in the sense of increasing the tax, has been modified.

The table on the tax on means of transport in the case of a combination of motor vehicles, an articulated motor vehicle or a road freight train, with a maximum authorized total weight of 12 tonnes or more, has been amended to increase the tax.

A statement was made regarding the possibility of paying, on the spot or no later than 48 hours from the date of concluding the minutes or, as the case may be, from the date of its communication, half of the minimum fine, for the contraventions applicable *local public administration*

Government Emergency Ordinance enters into force on 1 January 2018.

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