

Romania Tax news 30th of June, 2010

Government Emergency Ordinance 58/2010 regarding the amendment of Law 571/2003 regarding the Tax Code.

Related to the economic crisis, in order to equilibrate the level of public revenues with public expenses, the Government has issued the EO no. 58/2010 regarding the amendment of Law 571/2003 regarding the Tax Code. Below a summary of the most important changes:

VAT:

- ✓ The standard tax rate becomes **24% from 19%** as of July 1st 2010.

Payroll & personal income tax

- ✓ Any activity rendered by a freelancer can be reconsidered as depended activity if it fulfills at least one of the following criteria:
 - The beneficiary of the revenue has a subordination position toward the payer of the revenue, by respecting the working conditions imposed by the last one, respectively: his attributions and the method of their fulfillment, the place of the work activity, the working schedule.
 - In performing its activity, the beneficiary uses the material basis of the payer of the revenue.
 - The beneficiary of the revenue contributes only with its physical presence or its intellectual capacity, without its owned capital.
 - The payer of the revenue carries the displacement expenses related to the beneficiary, as: assignment allowances within the country and abroad.
 - The income payer bears the holiday and temporary working incapacity allowances for the beneficiary of the revenue.
 - Any other elements reflecting the dependent nature of the activity.
- ✓ The definition of intellectual property and the connected right has been stipulated in detail.

Ordonanta de Urgenta nr. 58/2010 pentru modificarea si completarea Legii nr. 571/2003 privind Codul Fiscal.

In contextul crizei economice, pentru echilibrarea veniturilor si cheltuielilor publice, Guvernul a emis OUG nr. 58/2010 cu privire la modificarea si completarea Legii 571/2003 privind Codul Fiscal. Mai jos, un sumar al celor mai importante schimbari:

TVA:

- ✓ Cota standard devine **24% de la 19%** incepand cu 1 Iulie 2010.

Contributii sociale si impozit pe venit

- ✓ Poate fi considerata activitate dependenta orice activitate desfasurata de un PFA ce indeplineste cel putin una din conditiile urmatoare:
 - Beneficiarul de venit se afla intr-o relatie de subordonare fata de platitorul de venit, respectand conditiile de munca impuse de acesta, respectiv: atributiile sale si modul de indeplinire, locul desfasurarii activitatii, programul de lucru.
 - In prestarea activitatii, beneficiarul de venit foloseste baza materiala a platitorului de venit;
 - Beneficiarul de venit contribuie numai cu prestatia fizica sau cu capacitatea intelectuala, nu si cu capitalul propriu.
 - Platitorul de venit suporta in interesul activitatii, cheltuielile de deplasare ale beneficiarului de venit: indemnizatiile de detasare delegare in tara si strainatate.
 - Platitorul de venit suporta indemnizatia de concediu de odihna si incapacitates temporara de munca in contul beneficiarului de venit.
 - Orice alte elemente care reflecta natura dependenta a activitatii.
- ✓ Se reglementeaza definitia dreptului de autor precum si a drepturilor conexe.

- ✓ The flat deductible expense deducted from the intellectual property income rights and revenues from monumental art work is decreased from 40% to 20%, respectively from 50% to 25%.
- ✓ The floor for the annual net income from independent activities based on income targets shall not be less than the minimum gross salary multiplied by 12 months.
- ✓ The following benefits offered to the employees become taxable with 16%, but are exempt from the social contributions:
 - Meal tickets given according to the law;
 - Kinder garden tickets given according to the law;
 - Holiday tickets given according to the law;
 - Present tickets given according to the law;
- ✓ Any type of professional revenues (revenues of Freelancers, property rights/author rights, revenues from agricultural activities) other than salary rights, become taxable with the income tax and related social contributions.
- ✓ The taxable base for such contributions shall be limited to 5 average gross salaries at the level of the medium gross salary used in for the funding of the social security budget. The obligation to declare, compute, retain and pay the social contributions is upon the income payer.
- ✓ Cheltuiala deductibila scazuta din venitul net din drepturile de proprietate intelectuala si veniturilor provenind din crearea unor lucrari de arta monumentala este diminuata de la 40% la 20% respectiv de la 50% la 25 %.
- ✓ Plafonul minim pentru venitul net anual dintr-o activitate independenta determinat pe baza de norme de venit nu va fi mai mic de un salariu de baza minim brut pe tara garantat în plata multiplicat cu 12 luni.
- ✓ Urmatoarele beneficii acordate salariatilor devin impozabile cu 16%, dar raman scutite de contributiile sociale:
 - Tichetele cadou acordate potrivit legii;
 - Tichetele de cresa acordate conform legii;
 - Tichetele de vacanta acordate conform legii;
 - Tichetele de masa acordate potrivit legii.
- ✓ Orice venituri de natura profesionala (veniturile PFA, drepturi de proprietate intelectuala/de autor, veniturile din activitatile agricole) altele decat cele salariale, se impoziteaza cu cota de impozit pe venit, si se vor datora contributiile sociale aferente acestora.
- ✓ Baza de calcul la care se aplica aceste contributii este limitata la 5 salarii medii brute pe economie la nivelul salariului mediu brut utilizat la fundamentarea bugetului asigurarilor sociale. Obligatia declararii, calculului, retinerii si platii contributiilor revine platitorului de venit.

Corporate tax

- ✓ The tax paid to a foreign state shall be deducted only based on a Double Tax Treaty provisions and the supporting documentation presented by the Romanian legal person.
 - ✓ Any loss incurred through a permanent establishment which is not an EU member state or a member of the European Association of Free Movement or any other state with whom Romania hasn't concluded a Double Tax Treaty, is deductible only from the revenues obtained by the permanent establishment.
 - ✓ The applicable tax rate for paid dividends by a Romanian legal person toward another Romanian legal person becomes 16%. The tax shall be declared and paid until the 25th of the following month of the dividend's distribution or payment. The tax shall not be applied if the Romanian legal person holds 10% from the participation rights over a 2 accomplished year period.
- ### Impozit pe profit
- ✓ Impozitul platit unui stat strain se deduce doar in baza Conventiei de evitare a dublei impuneri si a prezentarii documentatiei corespunzatoare de catre persoana juridica romana.
 - ✓ Orice pierdere realizata printr-un sediu permanent situat într-un stat care nu este stat membru al Uniunii Europene, al Asociatiei Europene a Liberului Schimb sau este situat într-un stat cu care România nu are încheiata conventie de evitare a dublei impuneri, este deductibila doar din veniturile obtinute de sediul permanent respectiv.
 - ✓ Cota de impozitare a dividendelor platite de catre o persoana juridica romana catre o alta persoana juridica este de 16%. Impozitul se declara si plateste pana la data de 25 ale lunii urmatoare. Acesta nu se aplica in cazul in care persoana juridica detine 10% din titlurile de participare pe o perioada de 2 ani impliniti.

- ✓ The incomes received as interest from deposits/current accounts/ deposit at term, incurred as of the 1st of July 2010 shall be taxable with 16% rate, the tax being final.
- ✓ Starting with the 1st of July 2010, the profit earned from the transfer of securities, other than shares and stocks of impounded entities shall be taxed with 16% tax rate, the tax retained being considered updated payment for the annual income tax due.
- ✓ The same tax rate of 16% is applicable in case of sell-purchase FOREX transactions, contractual based, as well as any other operations of this type, other than those with financial instruments transacted on authorized financial markets and supervised by the National Committee for Stocks and Shares.
- ✓ The annual net loss, resulted from the transaction of the stocks, other than shares and stocks of impounded entities, shall be recovered over a 7 consecutive year's period.
- ✓ The incomes received from gambling shall be taxed with 25% tax applied on the gross income.

Non-residents income:

- ✓ Revenues obtained from interest from deposits/current accounts/owned by non-resident persons, interest at term or other type of economy instruments belonging to non-residents persons, as well as the incomes obtained by non-residents from Romania from the derivate financial instruments transfer become taxable with 16% tax rate.
- ✓ The tax rate for the revenues obtained from the transfer of the stocks other than shares and stocks of closed entities becomes 16%.
- ✓ The tax credit shall be given to the legal and individual non-resident persons only based on the Double Tax Treaties provision concluded with Romania.
- ✓ The taxable rate for the revenues obtained from gambling by the non-resident persons becomes 25%.

✓ Veniturile sub forma de dobânzi pentru depozitele la vedere/conturi curente/depozite la termen, realizate începând cu 1 iulie 2010 se impun cu o cota de 16% din suma acestora, impozitul fiind final.

✓ Incepand cu 1 iulie 2010 câștigul determinat din transferul titlurilor de valoare, altele decât partile sociale si valorile mobiliare în cazul societătilor închise, se impune cu o cota de 16%, impozitul retinut constituind plata anticipata în contul impozitului anual datorat.

✓ Aceeasi cota de 16% se aplica si in cazul câștigul din operatiuni de vânzare-cumparare de valuta la termen, pe baza de contract, precum si din orice alte operatiuni de acest gen, altele decât cele cu instrumentefinanciare tranzactionate pe piete autorizate si supravegheate de Comisia Nationala a Valorilor Mobiliare.

✓ Pierderea neta anuala rezultata din tranzactionarea titlurilor de valoare, altele decat partile sociale si valorile mobiliare, se recupereaza din castigurile nete anuale obtinute in urmatoorii 7 ani consecutivi.

✓ Veniturile provenind din jocurile de noroc se impoziteaza cu o cota de 25% aplicata asupra venitului brut, prin retinerea la sursa.

Impozitul pe veniturile nerezidentilor:

✓ Veniturile obtinute din dobanzi la depozitele la vedere/conturi curente detinute de persoane nerezidente, dobanzile la depozitele la termen si/sau instrumente de economisire a persoanelor fizice nerezidente, precum si a veniturile obtinute de nerezidenti din Romania din transferul instrumentelor financiare derivate devin impozabile cu cota de 16%.

✓ Cota de impunere a veniturilor obtinute din transferul titlurilor de valoare altele decat partile sociale si valorile mobiliare in cadrul societătilor inchise la devine 16%.

✓ Creditul fiscal se acorda numai persoanelor fizice si juridice rezidente care obtin venituri din state cu care Romania are incheiate Conventii de evitare a dublei impuneri.

✓ Cotei de impunere a venitului obtinut din jocuri de noroc se majoreaza la 25% pentru persoane nerezidente.