



Hotararea nr. 864/2020 pentru modificarea si completarea Normelor metodologice de aplicare a Legii nr. 227/2015 privind Codul fiscal, aprobate prin Hotararea Guvernului nr. 1/2016

In vigoare de la 16 octombrie 2020

Titlul II Impozitul pe profit, pct.13, alin. 2, lit. d)

Sunt cheltuieli deductibile la calculul rezultatului fiscal si cheltuielile reglementate prin acte normative in vigoare: cheltuielile efectuate in vederea respectarii obligatiilor de compensare prevazute de Ordonanta de urgenta a Guvernului nr. 189/2002.

Titlul VII "Taxa pe valoarea adaugata"

Se modifica:

- ✓ exemplul nr. 2 de la punctul 4 referitor la persoana impozabila vs inregistrarea in scop de TVA;
- ✓ punctul 7, alin.(11) referitor la ceea ce nu constituie livrare de bunuri

Tot la pct.se introduce alin. 12[^]1, referitor la transferul alimentelor destinate consumului uman vs livrare de bunuri

Se introduce o nouă secțiune, secțiunea a 5-a, alcătuită din punctul 10[^]1,"SECȚIUNEA a 5-a, Dispoziții comune livrărilor de bunuri și prestărilor de servicii" unde se prevede:

- ✓ Cupoanele valorice pot fi in format fizic sau electronic.
- ✓ Instrumentele care ii confera detinatorului dreptul sa beneficieze de o reducere la achizitionarea de bunuri sau servicii, dar nu ii confera dreptul de a primi aceste bunuri

Decision no. 864/2020 for the amendment and completion of the Methodological Norms for the application of Law no. 227/2015 on the Tax Code, approved by Government Decision no. 1/2016

In force since October 16th , 2020

Title II income tax, point 13 (2) (d)

There are deductible expenses for the calculation of the fiscal result and the expenses regulated by normative acts in force: the expenses made in order to comply with the compensation obligations provided by the Government Emergency Ordinance no. 189/2002.

Title VII "Value added tax"

Amend as follows:

- ✓ example no. 2 from point 4 regarding the taxable person vs the registration for VAT purposes;
- ✓ point 7, paragraph (11) regarding what does not constitute the delivery of goods

Also at point, para. 12 [^] 1, regarding the transfer of food intended for human consumption vs. delivery of goods

A new section, section 5, consisting of point 10 [^] 1, "SECTION 5, PROVISIONS COMMON TO SUPPLIES OF GOODS AND SERVICES" shall be inserted where it provides:

- ✓ Vouchers may be in physical or electronic form.
- ✓ Instruments which entitle the holder to benefit from a reduction on the purchase of goods or services, but do not confer the right to receive such goods or services, shall not be considered as vouchers.

sau servicii, nu sunt considerate cupoane valorice.

- ✓ Tichetele pentru care nu se cunosc toate elementele necesare determinarii taxei datorate, cum ar fi tichetele de masa, tichetele de vacanta, tichetele cadou si altele asemenea, sunt considerate cupoane valorice cu scop multiplu.

Prevederi referitoare la cotele de TVA:

Se aplica cota redusa de TVA de 9% de orice persoana care livreaza apa de irigatii care este transportata prin infrastructura principala si/sau secundara de irigatii. In categoria persoanelor care livreaza apa destinata irigatiilor se cuprind inclusiv furnizorii de apa din Dunare, din rauri interioare, izvoare, lacuri de acumulare sau alte surse de apa, care alimenteaza sistemele de irigatii.

Cota redusa de TVA de 5% se aplica pentru livrarea de manuale scolare, carti, ziare si reviste, inclusiv pentru cele inregistrate pe suport electromagnetic sau pe alte tipuri de suporturi. Cartile si manualele scolare sunt tipariturile care au cod ISBN, inclusiv partiturile muzicale imprimate care au cod ISMN, indiferent de suportul pe care sunt livrate. Ziarele si revistele sunt orice tiparituri care au cod ISSN, indiferent de suportul pe care sunt livrate. Nu se aplica cota redusa a taxei pe valoarea adaugata pentru livrarea de carti, ziare si reviste care sunt destinate in principal sau exclusiv publicitatii.

Cota redusa de taxa de 5% se aplica numai pentru livrarea locuintelor respectiv pentru transferul dreptului de a dispune ca un proprietar.

Persoanele impozabile care livreaza locuinte vor aplica cota de 5%, inclusiv pentru avansurile aferente acestor livrari, daca din contractele incheiate rezulta ca la momentul livrarii vor fi

- ✓ Vouchers for which not all the elements necessary to determine the tax due are known, such as meal vouchers, holiday vouchers, gift vouchers and the like, are considered multiple-purpose vouchers.

Provisions regarding VAT rates:

A reduced VAT rate of 9% is applied by any person who delivers irrigation water that is transported through the main and/or secondary irrigation infrastructure. The category of persons who deliver water for irrigation includes water suppliers from the Danube, inland rivers, springs, reservoirs or other water sources, which supply irrigation systems.

The reduced VAT rate of 5% applies to the delivery of textbooks, books, newspapers and magazines, including those recorded on electromagnetic media or other types of media. Books and textbooks are prints that have an ISBN code, including printed music scores that have an ISMN code, regardless of the medium on which they are delivered. Newspapers and magazines are any prints that have an ISSN code, regardless of the medium on which they are delivered. The reduced rate of value added tax does not apply for the delivery of books, newspapers and magazines that are intended mainly or exclusively for advertising.

The reduced tax rate of 5% applies only for the delivery of the houses respectively for the transfer of the right to dispose as an owner.

The taxable persons who deliver houses will apply the 5% rate, including for the advances related to these deliveries, if it results from the concluded contracts that at the moment of delivery all the



indeplinute toate conditiile impuse de art. 291 alin. (3) lit. c) din Codul fiscal.

Cumparatorul va pune la dispozitia vanzatorului o declaratie pe propria raspundere, autentificata de un notar, din care sa rezulte ca va utiliza aceste cladiri conform destinatiei prevazute de lege, care se pastreaza de vanzator pentru justificarea aplicarii cotei reduce de TVA de 5%. Declaratia trebuie prezentata cel mai tarziu pana la momentul livrarii cladirii respective.

Prin cazare in cadrul sectorului hotelier sau al sectoarelor cu functie similara se intelege cazarea in structurile de primire turistice cu functiuni de cazare turistica. In cazul cazarii cu demipensiune, cu pensiune completa sau cu «all inclusive» cota redusa de TVA se aplica asupra pretului total al cazarii, care poate include si bauturi alcoolice.

Serviciile de restaurant si de catering reprezinta servicii care constau in furnizarea de produse alimentare si/sau de bautura, preparate sau nepreparate, pentru consumul uman, insotita de servicii conexe suficiente care sa permita consumul imediat al acestora. Pentru bauturile alcoolice servite la restaurant sau oferite in cazul serviciilor de catering se aplica cota standard de TVA, dar nu se considera ca are loc o livrare separata de bunuri, oferirea de bauturi alcoolice facand parte din serviciile de restaurant sau de catering.

In situatia in care se comercializeaza un pachet care cuprinde bunuri/servicii supuse atat cotei reduce de TVA, cat si cotei standard de TVA si se poate stabili o operatiune principala, cota de TVA aplicabila pachetului este cota de TVA aplicabila operatiunii principale chiar daca pretul fiecarui element care compune pretul total platit de un

conditions imposed by art. 291 para. (3) lit. c) of the Tax Code.

The buyer will provide the seller with a declaration on his own responsibility, authenticated by a notary, stating that he will use these buildings according to the destination provided by law, which is kept by the seller to justify the application of the reduced VAT rate of 5%. The declaration must be submitted at the latest by the time of delivery of the respective building.

By accommodation within the hotel sector or of the sectors with similar function is meant the accommodation in the tourist reception structures with tourist accommodation functions. In the case of accommodation with half board, full board or "all inclusive", the reduced VAT rate is applied to the total price of the accommodation, which may also include alcoholic beverages.

Restaurant and catering services represent services consisting in the supply of food and/or beverages, prepared or unprepared, for human consumption, accompanied by sufficient related services to allow their immediate consumption. For alcoholic beverages served at the restaurant or offered in the case of catering services, the standard VAT rate applies, but it is not considered that there is a separate delivery of goods, the supply of alcoholic beverages being part of the restaurant or catering services.

If a package that includes goods/services subject to both a reduced VAT rate and a standard VAT rate is marketed and a principal transaction can be determined, the VAT rate applicable to the package is the rate of VAT applicable to the principal transaction even if the price of each item making up the total price paid by a consumer in order to qualify for the benefit can be identified.



consumator pentru a putea beneficia de aceasta prestatie poate fi identificat.

Prevederi referitoare la operatiunile scutite fara drept de deducere

Sunt scutite de TVA operatiunile de administrare a creditelor si/sau administrare a garantiilor de credit, efectuate de catre una dintre persoanele care acorda creditul sindicalizat si care este desemnata de ceilalti participanti la contractul de credit sindicalizat pentru administrarea creditului/administrarea garantiilor de credit.

Fondurile speciale de investitii sunt si fondurile de pensii administrate privat, fondurile de pensii facultative si fondurile de pensii ocupationale.

Prevederi referitoare la ajustarea dreptului de deducere

Persoana impozabila realizeaza o ajustare pozitiva sau, dupa caz, trebuie sa efectueze o ajustare negativa a taxei deductibile in situatii precum:

- alocarea de bunuri/servicii pentru operatiuni care nu dau drept de deducere si ulterior alocarea acestora pentru realizarea de operatiuni care dau drept de deducere, precum si alocarea de bunuri/servicii neutilizate pentru operatiuni care dau drept de deducere si ulterior alocarea acestora pentru realizarea de operatiuni care nu dau drept de deducere;
- in cazul bunurilor/serviciilor neutilizate la data inregistrarii in scopuri de TVA a persoanei impozabile care a aplicat regimul special de scutire prevazut la art. 310 din Codul fiscal, iar, in cazul bunurilor/serviciilor, in cazul anularii inregistrarii in scopuri de TVA a persoanei impozabile ca urmare a prevederilor art. 316 alin. (11) lit. f) si g) din Codul fiscal.

Provisions regarding exempted operations without right of deduction

The operations of credit administration and/or administration of credit guarantees, performed by one of the persons granting the syndicated credit and which is designated by the other participants in the syndicated credit contract for credit administration/administration of credit guarantees, are exempt from VAT.

Special investment funds are also privately managed pension funds, voluntary pension funds and occupational pension funds.

Provisions regarding the adjustment of the right to deduct

The taxable person makes a positive adjustment or, as the case may be, must make a negative adjustment of the deductible tax in situations such as:

- the allocation of goods / services for operations that do not give the right of deduction and subsequently their allocation for the performance of operations that give the right of deduction, as well as the allocation of unused goods/services for operations that give the right of deduction and subsequently their allocation for operations which do not give the right of deduction;
- in case of unused goods / services at the date of registration for VAT purposes of the taxable person who applied the special exemption regime provided in art. 310 of the Tax Code, and, in the case of goods/services, in case of cancellation of the registration for VAT purposes of the taxable person as a result of the

In situatia in care bunurile de capital au fost utilizate pentru realizarea de operatiuni cu drept de deducere, altele decat cele constand in livrarea in regim de taxare a bunurilor respective, in perioada in care persoanele impozabile au avut codul de TVA anulat acestea au dreptul, dupa reinregistrarea in scopuri de TVA, sa efectueze o ajustare pozitiva pentru o cincime sau o douazecime din taxa dedusa initial pentru fiecare an din perioada in care au avut codul de TVA anulat si in care bunurile de capital au fost utilizate pentru realizarea de operatiuni cu drept de deducere. Ajustarea se reflecta in primul decont de taxa depus dupa inregistrarea in scopuri de TVA a persoanei impozabile sau, dupa caz, intr-un decont ulterior.

Prevederi referitoare la inregistrarea in scopuri de TVA

Inregistrarea in scopuri de TVA va considera valabila incepand cu:

- prima zi a lunii urmatoare celei in care persoana impozabila solicita inregistrarea, in cazurile prevazute la art. 316 alin. (1) lit. b) si c) din Codul fiscal;
- data comunicarii certificatului de inregistrare in scopuri de TVA sau a deciziei privind inregistrarea, din oficiu, in scopuri de TVA, in cazurile prevazute la art. 316 alin. (1) lit. a) si alin. (10) din Codul fiscal.

Criteriile pentru evaluarea riscului fiscal in cazul persoanelor impozabile, societati cu sediul activitatii economice in Romania care solicita inregistrarea in scopuri de TVA si carora le-a fost anulata inregistrarea in scopuri de TVA potrivit art. 316 alin. (11) lit. h) din Codul fiscal in baza procedurii de evaluare a intentiei si capacitatii de a desfasura activitati economice in sfera de aplicare a TVA, sunt prevazute in anexa nr. 5 la normele

provisions of art. 316 para. (11) lit. f) and g) of the Tax Code.

If the capital goods have been used for carrying out operations with the right of deduction, other than those consisting in the taxable delivery of the respective goods, during the period when the taxable persons had the VAT code canceled, they have the right, after re-registration for VAT purposes, to make a positive adjustment for one-fifth or one-twentieth of the tax initially deducted for each year from the period in which they had the VAT code canceled and in which the capital goods were used to carry out operations with the right to deduction. The adjustment is reflected in the first tax return filed after the registration for VAT purposes of the taxable person or, as the case may be, in a subsequent return.

Provisions regarding the registration for VAT purposes

The registration for VAT purposes will be considered valid starting with:

- the first day of the month following the month in which the taxable person requests the registration, in the cases provided in art. 316 para. (1) lit. b) and c) of the Tax Code;
- the date of communication of the registration certificate for VAT purposes or of the decision regarding the registration, ex officio, for VAT purposes, in the cases provided in art. 316 para. (1) lit. a) and para. (10) of the Tax Code.

The criteria for the evaluation of the fiscal risk in the case of taxable persons, companies with the headquarters of the economic activity in Romania that request the registration for VAT purposes and whose registration for VAT purposes has been canceled according to art. 316 para. (11) lit. h) of the Tax Code based on the procedure for evaluating the intention and capacity to carry out economic activities in the scope of VAT, are provided in annex



metodologice care se va inlocui cu anexa 1 la prezenta hotarare.

Scutirea de la plata accizelor se acorda direct si in cazul in care persoana care detine certificat de autorizare ca operator aerian/detine dreptul de folosinta, sub orice forma, a unei aeronave pentru care exista un certificat de autorizare pentru aviatie, aprovizioneaza aeronavele detinute cu produse energetice care provin din achizitii intracomunitare proprii.

Scutirea directa de la plata accizelor se aplica si in cazul produselor energetice destinate utilizarii drept combustibil pentru aviatie de catre autoritatile publice, deplasate catre un loc de livrare directa situat pe teritoriul Romaniei, in cazul in care locul respectiv a fost indicat de antrepozitarul autorizat din Romania.

Prin loc de livrare directa se intelege locul unde produsele energetice destinate utilizarii drept combustibil pentru aviatie sunt receptionate in alimentatoarele destinate alimentarii aeronavelor detinute de autoritatile publice sau in rezervoarele detinute sub orice forma de aceste autoritati publice, pentru alimentarea ulterioara a aeronavelor pe care le detin.

Pentru bauturile alcoolice si produsele din tutun prelucrat retrase de pe piata, accizele platite pot fi restituite. Prin retragere de pe piata se intelege retragerea din circuitul economic a produselor eliberate pentru consum, in vederea reciclarii, reconditionarii sau distrugerii acestora. In acest sens, operatorul economic anunta in scris autoritatea vamala teritoriala despre intentia de a retrage de pe piata produsele accizabile, in vederea reciclarii, reconditionarii, distrugerii, cu cel putin 7 zile lucratoare inainte de data la care incepe/se realizeaza distrugerea acestora.

no. 5 to the methodological norms that will be replaced with annex 1 to the present decision.

The exemption from the payment of excise duties is granted directly if the person who has a certificate of authorization as an air operator / has the right to use, in any form, an aircraft for which there is a certificate of authorization for aviation, supplies the aircraft owned with products energy from their own intra-Community acquisitions.

The direct exemption from the payment of excise duties also applies in the case of energy products intended for use as aviation fuel by public authorities, moved to a place of direct delivery located in Romania, if the place was indicated by the authorized warehousekeeper in Romania .

Direct delivery place means the place where energy products intended for use as aviation fuel are received in the feeders intended to supply aircraft owned by public authorities or in tanks held in any form by these public authorities, for subsequent refueling of aircraft they own.

For alcoholic beverages and processed tobacco products withdrawn from the market, the excise duties paid may be refunded. Withdrawal from the market means the withdrawal from the economic circuit of products released for consumption, in order to recycle, recondition or destroy them. In this sense, the economic operator notifies in writing the territorial customs authority about the intention to withdraw from the market excisable products, in order to recycle, recondition, destroy, at least 7 working days before the date on which their destruction begins / takes place.

La distrugerea bauturilor alcoolice si produselor din tutun asista un reprezentant vamal care certifica documentul de distrugere.

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A customs representative certifying the destruction document assists in the destruction of alcoholic beverages and tobacco products.

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