

Updated methodological norms to the Fiscal Code



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Amendments in brief:

The updated methodological norms for the application of Law no. 227/2015 on the Fiscal Code – Government Decision no. 1336 of December 29, 2023, amending and completing the Methodological Norms for the application of Law no. 227/2015 on the Fiscal Code, approved by Government Decision no. 1/2016, were published on December 29, 2023, in the Official Gazette no. 1196.

- The changes to the taxation norms concerning income from the transfer of real estate properties held as personal assets come into effect on **December 29, 2023**.
- The changes to the norms regarding VAT and excise duties come into effect on **January 1, 2024**.

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Amendments in detail:

<p>Keywords:</p> <ul style="list-style-type: none"> Income from the transfer of real estate properties from personal patrimony Date of acquisition Constructions Lands Properties acquired through inheritance Date of acquisition of bare ownership Property rights by donation Gratuitous title Land book Law on Cadaster and 	<p>The updated methodological norms for the application of Law no. 227/2015 on the Fiscal Code (Government Decision 1336/2023):</p> <p>A. Income from the transfer of real estate properties held as personal assets (Title IV "Income Tax")</p> <ul style="list-style-type: none"> ❖ These changes come into effect on December 29, 2023. ❖ <u>A new exception is added</u>, similarly to the transfer of property rights through donation, in the case of establishing or transferring property rights free of charge – the taxpayer status is transferred to the acquirer of these rights, provided they are a taxpayer according to income tax provisions. ❖ Additionally, alongside existing provisions, <u>the term for calculating the acquisition date is defined</u> in the following cases: <ul style="list-style-type: none"> – For constructions erected at different times – the term starts from the date of the last acceptance report upon completion of works. – For any type of constructions and the associated land, as well as for land without constructions (other than new constructions and the associated land, construction erected at different times, unfinished constructions, and their associated land) – the term starts from the date of acquisition. ❖ Furthermore, <u>the acquisition date is defined</u> for the following situations: <ul style="list-style-type: none"> – In the case of properties acquired through inheritance – the acquisition date is considered the date of the author of the succession's death, regardless of the date of the heir certificate issuance or the final and irrevocable/definitive and enforceable court decision in the case of a procedure finalized through a court decision. – In the event of alienating real estate properties where the bare ownership and property rights were acquired at different times – the acquisition date is considered the date of acquiring the bare ownership. – In the case of alienating real estate properties held by two or more owners, each acquiring ownership rights in different quotas at different times – the acquisition date is specific to each owner's share acquisition date. – In the case of alienating a real estate property held by one owner, where the ownership rights were acquired in different shares at different times – the acquisition date corresponds to each share's acquisition date. – In the case of transferring property rights through donation, as well as in the case of establishing or transferring property rights free of charge, the acquisition date is the date of concluding the authentic act or, if applicable, the date of the final and irrevocable/definitive and enforceable court decision. ❖ <u>A new provision is introduced</u> – no tax is due at the time of factual possession notation in the land book during systematic or sporadic registration, and upon subsequent registration of property rights
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Real Estate Publicity	resulting from this notation, in accordance with the provisions of Law no. 7/1996 on cadaster and real estate publicity.
• Determination of net income	❖ The method for determining the net income subject to the 1% or 3% tax, as the difference between the transaction value and the non-taxable threshold of lei 450,000, is repealed.
• 1% or 3% tax	❖ Therefore, in addition to the already provided holding period, the tax is calculated based on the declared or market study-established value when the declared value is below the minimum value determined by authorized expert evaluators.
• Non-taxable threshold of 450,000 lei	❖ When constituting or transferring property rights, the tax is determined based on the value declared by the parties, but not less than 20% of the minimum value established by a market study conducted by chambers of notaries public with authorized expert evaluators, as per the law. The same value will be set upon extinguishing these property rights by conventional means or with the consent of their holder.
• 20% of the minimum value	❖ In the case of transferring bare ownership , the tax is determined based on the value declared by the parties, but not less than 80% of the minimum value established by a market study conducted by chambers of notaries public with authorized expert evaluators, as per the law.
• Transmission of bare ownership	❖ In the case of transferring jointly owned property , the tax is due by each joint owner according to their ownership quota . When ownership quotas are unspecified, it is presumed that each joint owner holds an equal share.
• 80% of the minimum value	❖ In the case of transferring co-ownership property , the tax is due from each co-owner in equal ownership shares .
• Co-ownership	❖ When multiple real estate properties from personal assets are transferred through a single legal act between living individuals, regardless of the number of owners , the tax is due from each owner based on the proportional value of each transferred property.
• Joint ownership	❖ In the case of real estate transferred as a contribution to the share capital , the value for determining the tax is the value specified in the deed through which the real estate is contributed as an in-kind contribution to the social capital, appraisal report, or market study, as applicable:
• Contribution to share capital	<ul style="list-style-type: none"> – The value from the transfer deed, but not less than the value in the appraisal report (when preparing the appraisal report is mandatory). – The value from the transfer deed or the value established by a market study, in case the declared value is lower than the minimum value set by chambers of notaries public with authorized expert evaluators according to the law (when preparing the appraisal report is not mandatory).
• Value from the transfer document	❖ In the case of exchanging one or more real estate properties for another real estate property/properties , it is considered as two/multiple transactions, and the tax is calculated based on the value of each of the real

<ul style="list-style-type: none"> • 19% VAT • Foods with added sugar whose total sugar content is at least 10g per 100g of product • Reduced VAT rate of 9% • Powdered milk for newborns, sponge cake, biscuits • Delivery of dwellings • Threshold value of 600,000 lei 	<p>estate properties transmitted, as provided in paragraph (4) of Article 111 of the Fiscal Code.</p> <p>❖ Similar principles are applicable in the case of other types of real estate holdings (e.g., joint ownership, co-ownership, the transfer of multiple properties, properties valued by court decision, or associated documentation).</p> <p>B. Title VII „Value Added Tax”</p> <p>❖ These changes come into effect on January 1, 2024.</p> <p>❖ <u>A provision is introduced to clarify the application of the standard VAT rate of 19% for foods with added sugar whose total sugar content is at least 10g per 100g of product, except powdered milk for newborns, infants, and young children, as well as sweet bread and certain biscuits.</u></p> <p>❖ <u>The application of the reduced VAT rate of 9% is specified for products with added sugar:</u></p> <ul style="list-style-type: none"> – Powdered milk for newborns, infants, and young children (start, follow-up, and growth formulas falling under NC codes 0402 and 1901 10) – Sweet bread sold under this denomination and falling under NC code 1905 – Biscuits sold under this denomination and falling under NC codes 1905 31, 1905 90 45, and 2309 – <u>It is clarified</u> that for the above-mentioned foods, the determination of added sugar is based on the ingredients list, regardless of quantity, while the total sugar content is from nutritional information. If the total sugar content is expressed in grams per volume measurement unit, taxable persons must convert it to the measurement unit for mass. – The 9% reduced VAT rate does not apply to the supply, import, or intra-Community acquisition of food supplements falling under the exceptions provided in Article 291(2)(e) of the Fiscal Code. <p>❖ <u>The application of the 9% reduced VAT rate for housing delivery is detailed:</u></p> <ul style="list-style-type: none"> – Housing as part of social policy – Outbuildings are not included in the calculation of the 120 sqm usable area of the dwelling. – The value limit of 600,000 lei includes the value of the dwelling, including the value of undivided shares in common parts of the building, outbuildings, and, where applicable, the land on which the dwelling is built, but excludes certain servitude rights related to that particular dwelling. – The usable area of the dwelling must be included in the cadastral documentation attached to the legal transaction between living individuals that involves the transfer of property rights. – Individuals who deliver housing apply the 9% reduced rate for advances and adjust the VAT rate upon delivery of the dwelling.
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• Sale of packages that include goods and services	<ul style="list-style-type: none"> – In the case of buildings intended for other purposes, the buyer must provide a notarized declaration regarding the appropriate use of the building.
• VAT registration	<ul style="list-style-type: none"> ❖ <u>Regarding the sale of packages that include goods and services with different VAT rates:</u> <ul style="list-style-type: none"> – The VAT rate of the main operation applies, even if each element of the package has different VAT rates. – An example is provided for the sale of a package that includes access to a sports event and related facilities (e.g., catering/restaurant services, food products, parking access, etc.) – the applicable VAT rate for the package is the VAT rate associated with access to the sports event, considered the main operation.
• Execution of the decision to cancel VAT registration	<ul style="list-style-type: none"> ❖ In the case of taxable persons who request VAT registration concurrently with their registration in the trade registry, the latter is considered valid starting from the date of the taxable person's registration in the trade registry.
• Applications for VAT registration	<ul style="list-style-type: none"> ❖ A new clarification is added – if the execution of the decision to cancel the VAT registration is suspended due to a court decision in accordance with the Law on administrative litigation, all consequences of this decision are suspended until the process is finalized. During the suspension period, the tax authority will maintain VAT registration for the relevant taxable person.
• 60-day term	<ul style="list-style-type: none"> ❖ VAT registration requests submitted by taxable persons who requested this registration along with their registration in the trade registry during 2023 but do not appear at the competent tax authority's office to pick up the VAT registration certificate within 60 days of the decision's effective date will be canceled. ❖ Effective VAT registration will be considered valid only for those taxable persons who, in the same context, appear at the competent tax authority's office to pick up the registration certificate within the specified 60-day period from the effective date of the decision.
• Packaging operations	<p>Title VIII „Excise Duties and other Special Taxes”</p> <ul style="list-style-type: none"> ❖ These changes come into effect on January 1, 2024. ❖ An additional provision is added stating that packaging operations do not include post-packaging activities for excisable products intended for release for consumption. Post-packaging involves applying additional packaging to excisable products that have already been individually packaged. It's a subsequent packaging action carried out to prepare products for consumption. ❖ It is added that no guarantee is required for the transportation of energy products through fixed pipelines, except when appropriately justified circumstances exist. ❖ It is further added that economic operators who produce, acquire from other EU member states, or <u>import non-alcoholic beverages with added sugar, where the total sugar level ranges between 5-8g / 100ml and non-</u>
• Excise goods	
• Guarantee	
• Transportation of energy products through fixed pipelines	
• Purchase/ Production/ Import of alcoholic	

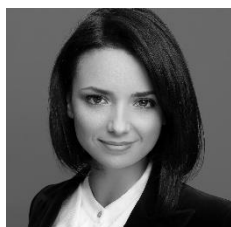
<p>beverages with added sugar</p> <ul style="list-style-type: none"> • 5 business-day term 	<p><u>alcoholic beverages with added sugar where the total sugar level is over 8g / 100ml</u>, must notify the territorial customs authority.</p> <p>❖ Within 5 working days of transmitting the notification, the territorial customs authority records the notification in the special register created for this purpose at the competent customs authority level.</p>
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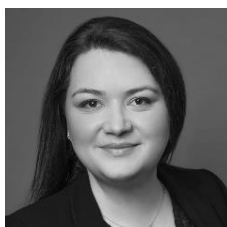
În acest moment, NOA operează din trei sedii la București, Cluj-Napoca și Londra.



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