

Tax & Legal Weekly Alert

16 - 20 January 2017

In this issue:

The registration procedure in the Registry of the Ministry for Economy, Trade, Industry and the Business Environment of the economic operators authorised to perform waste recovery operations was adopted

According to Law no. 211/2011 on the regime of waste, the economic operators that perform waste recovery operations have the obligation to register at the Ministry for Economy, Trade, Industry and the Business Environment.

The adoption of Order no. 1422/2016 which regulates the procedure of registration in the Registry of the economic operators authorised to perform waste recovery operations contributes to the clarification and improvement of the legal framework applicable in the domain of waste, including that of the packaging waste.

The Draft Order for the approval of the form and content of the "Declaration regarding the obligations owed to the Environmental Fund" is subject to public debate

On 16 January 2017, following the latest legislative amendments performed regarding the contributions and taxes owed to the Environmental Fund, the Ministry of Environment has put under public debate the Draft Order for the approval of the form and content of the "Declaration regarding the obligations due to the Environmental Fund", which is envisaged to be enforced, in order to ensure the alignment of the legal framework applicable to the Environmental Fund obligations.

Brief overview of the Guidelines issued by Article 29 Data Protection Working Party on Data Protection Officers

On 13 December 2016, Article 29 Data Protection Working Party ("WP29") adopted the Guidelines on Data Protection Officers ("DPO's").

The Guidelines are aimed at clarifying the relevant provisions of the GDPR in order to help controllers and processors to comply with the law but also to assist the DPO's in their role. The Guidelines also provide best practice recommendations building on the experience gained in some EU Member States.

Amendments to the Tax Code

Law no. 227/2015 regarding the Tax Code was amended and supplemented according to Law no. 2/2017 published in the Official Gazette no. 36 / 12.01.2017.

Law no. 2/2017 amends Title IV "Personal Income Tax" and V "Mandatory Social Contributions".

Amendments to the Order regarding software development activities

Order 2284/2016 regarding software development activities was published in the Official Gazette No. 22 / 09.01.2017.

Form 088 was repealed

The President of the National Agency for Fiscal Administration – Bogdan-Nicolae Stan, has repealed the Form 088 (Affidavit to assess the intention and capacity to undertake economic activities involving operations in the scope of VAT).



The registration procedure in the Registry of the Ministry for Economy, Trade, Industry and the Business Environment of the economic operators authorised to perform waste recovery operations was adopted

According to Law no. 211/2011 on the regime of waste, the economic operators authorised to perform waste recovery operations, additional to the obligation of holding an environmental permit/ integrated environmental permit, must register at the Ministry for Economy, Trade, Industry and the Business Environment.

On 12 January 2017, in the Romanian Official Gazette no. 35, Order no. 1.422/2016 for the adoption of the registration procedure of the economic operators which perform waste recovery operations was published, regulating thus the procedure which must be followed in order to register in the Registry of the economic operators authorised to perform waste recovery operations.

Essential provisions:

- The registration in the Registry of the economic operators authorized to perform waste recovery operations (the "Registry") is completed in 30 days from the submission of the request. The request file is submitted at the registrar's office or by post at the Ministry for Economy, Trade, Industry and the Business Environment;
- Once the registration is completed, the economic operators have to submit annually, until 31 March, a reconfirmation of the registration;
- At the submission of the registration's reconfirmation, the economic operators must provide information regarding the realizations obtained in the precedent year, such as the turnover, the quantity of waste recovered and the number of employees;
- The Registry is public and may be accessed on the website of Ministry for Economy, Trade, Industry and the Business Environment, and it expressly indicates all the waste categories which the economic operator is able to recover, according to the environmental permit/ integrated environmental permit detained.

What does this mean for you?

The adoption of the registering procedure in the Registry of the economic operators authorized to perform waste recovery operations is contributing to the improvement of the legal framework applicable to the waste domain, including that of packaging waste.

Taking into account the ultimate legislative amendments occurred at the end of 2016, with respect to the Methodology for the computation to the Environmental Fund, explicitly the regulation of the method of fulfilling individually the packaging waste recovery targets available to the economic operators which have the responsibility to ensure the management of the packaging waste resulted from the placement on the national market of products under their own name, this procedure is enabling the economic operators, which choose to fulfil the packaging waste management obligations individually, by ensuring them a transparent registry with all the economic operators authorised to perform waste recovery operations, which can be contracted.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

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The Draft Order for the approval of the form and content of the “Declaration regarding the obligations due to the Environmental Fund” is subject to public debate

On January 16th, 2017 the Ministry of Environment published on its website the Draft Order for the approval of the form and content of the “Declaration regarding the obligations due to the Environmental Fund”, putting thus under public debate the form and the content of the Declaration regarding the obligations due to the Environmental Fund, which is envisaged to be adopted in short time, in order to ensure that the taxpayers have all the legal tools to fulfil their reporting obligations at the Environmental Fund Administration.

According to the information published on the Ministry’s website, the interested public has a term of 10 day to submit their opinions, suggestions and complaints regarding the draft order.

The enforcement of the normative act, will contribute to the legal framework applicable to the contributions owed to the Environmental Fund, being aligned to the Methodology for the computation of contributions, taxes owed to the Environmental Fund, approved through Order no. 578/2006, in light of the ultimate amendments performed under Order no. 2143/2016.

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Brief overview of the Guidelines issued by Article 29 Data Protection Working Party on Data Protection Officers

On 13 December 2016, Article 29 Data Protection Working Party ("WP29") adopted the Guidelines on Data Protection Officers ("DPO's").

The Guidelines are aimed at clarifying the relevant provisions of the GDPR in order to help controllers and processors to comply with the law but also to assist the DPO's in their role. The Guidelines also provide best practice recommendations building on the experience gained in some EU Member States.

Below we have included a brief overview of the Guidelines meant to provide you a preliminary view on the opinions and suggestions of WP29 on the topic of the DPO, placing specific emphasis on the designation criteria for DPOs.

1. Designation of the DPO

As a general remark, the appointment of the DPO is encouraged by WP29 even when the GDPR does not specifically mention the obligation to appoint such an officer.

Under the GDPR it is mandatory for controllers and processors to designate a DPO, subject to several conditions being fulfilled, according to article 37(1), as follows: (i) when processing is carried out by a public authority or body; (ii) where the core activities of the controller or processor consist of processing operations which require regular and systematic monitoring of data subjects on a large scale; or (iii) where the core activities of the controller or the processor consist of processing on a large scale of special categories of data or personal data relating to criminal convictions and offences.

Public authorities or bodies

WP29 mentions that although GDPR does not include a definition of the "public body or authority" such notion may be determined by the national law of each Member State. Public authorities and bodies may include national, regional and local authorities.

However, WP29 also acknowledges that the notion of public bodies and authorities also includes a range of other bodies governed by public law. WP29 emphasizes that public tasks or activities in the public sector may be carried out by other legal persons governed by public or private law, in sectors such as public transport, water and energy supply, road infrastructure or public service broadcasting and that in these cases data subjects may be in a similar situation to when their data are processed by a public authority.

Core activities

The term of "core activities" used by article 37(1) (b) and (c) of the GDPR should be analyzed in conjunction with Recital 97 of the GDPR which specifies that the core activities of a controller relate to "primary activities and do not relate to the processing of personal data as ancillary activities". Therefore, "core activities" can be considered as the key operations necessary to achieve the controller's or processor's goals.

However, WP29 explains that "core activities" should not be interpreted as excluding activities where the processing of data forms an inextricable part of the controller's or processor's activity. For example, the core activity of a hospital is to provide health care, which could not be provided safely and professionally without processing health data from its patients. On the other hand, WP29 mentions that activities such as payroll or IT support, should not be considered as core activities but rather ancillary functions which would not trigger the obligation to appoint a DPO.

Large scale processing

Although the GDPR does not define what constitutes "large scale processing", Recital 91 uses this term, specifying that the aim of such operations consists in processing "a considerable amount of personal data at regional, national or

supranational level and which could affect a large number of data subjects and which are likely to result in a high risk”.

WP29 recommends several factors that should be considered when determining whether the processing is carried out on a large scale, among which:

- the number of data subjects concerned - either as a specific number or as a proportion of the relevant population;
- the volume of data and/or the range of different data items being processed; or
- processing of customer data in the regular course of business by an insurance company or a bank.

WP29 also provides several examples that do not constitute large-scale processing, such as the processing of patient data by an individual physician.

Regular and systematic monitoring

This notion is also not defined in the GDPR but the concept of “monitoring the behavior of data subjects” is mentioned in recital 2415 and clearly includes all forms of tracking and profiling on the internet, including for the purposes of behavioral advertising. WP29 mentions that the notion of monitoring is not restricted to the online environment and online tracking should only be considered as one example of monitoring the behavior of data subjects.

WP29 provides examples on the interpretation of the terms “regular” and “systematic”. Accordingly, “regular” may be interpreted as meaning, among others, as a monitoring which is recurring or constantly or periodically taking place and “systematic” may be interpreted as taking place as part of a general plan or strategy for data collection.

2. Key Characteristics of the DPO Position and Relevant Tasks

The Guidelines also include the WP29’s opinion on the key characteristics provided by the GDPR with respect to the DPO position such as the fact that the DPO must be easily accessible from each establishment where the DPO is providing assistance. WP29 also comments on the expertise and skills which are required for the DPO position placing specific emphasis on the level of expertise, professional qualities and the ability of the DPO to fulfil its tasks.

The Guidelines also include a section of frequently asked questions for each of the above topics.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

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Amendments to the Tax Code

Law no. 2/2017 provides amendments and supplements to the Fiscal Code, the most important of them are summarized below:

Title IV Personal Income Tax

- The computation method for the monthly taxable income obtained from pensions is amended. Such income will be determined by deducting the tax-free threshold of 2,000 lei, from the income effectively derived;
- The income payers for salary and salary assimilated income, intellectual property rights and lease, as well as companies, which are part in an association without legal status with an individual, are no longer required to submit the tax return regarding the income tax computed and withheld at source for each beneficiary (i.e., form 205).

Title V Mandatory Social Contributions

- The health insurance contribution due by individuals deriving pension income or allowances for temporary work incapacity due to a work accident or a professional disease is covered from the state budget funds and the computation base will be the monthly income derived from pensions.
- The pension income payers must send electronically the lists of individuals who obtain this type of income to the National Health Insurance House.

Entry into force

The amendments mentioned above are applicable for the income derived starting with 1 February 2017.

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Amendments to the Order regarding software development activities

Through Order 2284/2016, published in the Official Gazette No. 22 / 09.01.2017, the Romanian authorities brought several significant changes to the applicability of the income tax exemption for employees performing software development activities.

Thus, starting with the income for the month of February 2017 the following provisions will enter into force:

- Companies applying the exemption for employees are still obliged to derive income from software development activities, but they are no longer subject to obtaining a minimum income of USD 10,000 / exempted employee, in the previous fiscal year;
- The tax exemption can also be applied by:
 - Companies that are set-up during the fiscal year
Applicable date: set-up date
Facilities granted: exempted from deriving income from software development activities in the year of registration and the following fiscal year.
 - Companies which have been subject to reorganization processes during the year
Applicable date: reorganization date
Facilities granted: exemption from deriving income from software development activities in the year of reorganization.
- The software development activity is defined as being the provision of one of the activities included in the order, for creating a final product or a component of a final product, for selling purposes.

Additionally, the obligations to keep supporting documentation are simplified by eliminating (for the most part) the obligation to keep authenticated copies of employment contracts and study diplomas and by introducing a provision regarding the archiving of such documents in an electronic format.

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Form 088 was repealed

The Form 088 was repealed by order nr. 210/2017 of the President of the National Agency for Fiscal Administration, Bogdan-Nicolae Stan (Affidavit to assess the intention and capacity to undertake economic activities involving operations in the scope of VAT).

Accordingly, the order no. 3841/2015 regarding the approval of the form 088 will be repealed starting with 1 February 2017. Therefore, the taxable persons who will apply for registration for VAT purposes will not submit this form anymore. Likewise, the tax authorities will not require this form for their risk assessments.

Taking into consideration that the form 088 is also mentioned in the order of the President of the National Agency for Fiscal Administration no. 2393/2016, we expect it to be modified in the near future.

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