

2014

NATIONAL AGENCY FOR FISCAL ADMINISTRATION

General Directorate of services for taxpayers

**Guide on the taxation of income obtained from  
LEASING the agricultural goods from the  
personal patrimony**

## Guide on the taxation of income obtained from LEASING the fields

According to the Fiscal code<sup>1</sup>, the income obtained from leasing the agricultural goods from the personal patrimony, is classified in the category of income from rental and leasing activities.

According to the Civil code<sup>2</sup> the leasing is the rental of agricultural goods.

### Goods that can be leased<sup>3</sup>

Any agricultural goods can be leased, such as:

- a) agricultural fields, namely arable - productive agricultural fields, vineyards, orchards, viticultural, fruit-growing nurseries, fruit trees, hops and mulberry tree plantations, wooded pastures, lands occupied by agricultural-zootechnical constructions and installations, stock ponds and land improvement development, technological roads, storage platforms and spaces that serve to the needs of the agricultural production and the non-productive fields that can be developed and used for agricultural production;
- b) animals, any type of constructions, vehicles, machinery and other similar goods for agricultural use.

### The lease contract

The lease contract must be concluded in written form, under the sanction of absolute nullity.<sup>4</sup>

The registration of the lease contract:

- **the lessee** must submit a copy of the contract to the local council in the territorial jurisdiction of which are located the leased agricultural goods to be registered in a special register kept by the secretary of the local council; when the leased goods are located in the territorial jurisdiction of many local councils, one copy of the contract is submitted at each local county in the territorial jurisdiction of which are located the leased agricultural goods<sup>5</sup>.
- **the lessor** has the obligation to **register the contract** concluded between the parties, as well as the subsequent modifications within 15 days from its concluding/making its modifications at the **competent fiscal body**, respectively at the fiscal body in the territorial jurisdiction of which he/she has the domicile.<sup>6</sup>

### The determination of the gross income from the lease

The gross income obtained from leasing the agricultural goods from the personal patrimony is established based on the legal report/**contract concluded between the**

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<sup>1</sup> Art. 62 from Law no. 571/2003 concerning the Fiscal code, with subsequent amendments and completions;

<sup>2</sup> Art. 1778 from Law no. 287/2009 concerning the Civil code, republished, with subsequent amendments and completions;

<sup>3</sup> Art. 1836 from Law no. 287/2009 concerning the Civil code, republished, with subsequent amendments and completions;

<sup>4</sup> Art. 1838 paragraph (1) from Law no. 287/2009 concerning the Civil code, republished, with subsequent amendments and completions;

<sup>5</sup> Art. 1838 paragraph (2) from Law no. 287/2009 concerning the Civil code, republished, with subsequent amendments and completions;

<sup>6</sup> Art. 81 paragraph (2) from Law no. 571/2003 concerning the Fiscal code, with subsequent amendments and completions;

**parties** and represents the total amounts in cash collected and/or the equivalent in lei of the income received in kind.

In order to determine the gross income for the amounts that are the lease in cash and/or the equivalent in lei of the income in kind it is also added, if appropriate, the value of the expenses that are borne by the owner, beneficial owner or other legal owner according to the legal provisions or contractual agreement, if these are made by the lessee.

If the lease is expressed in kind, the evaluation in lei will be made based on the average prices of agricultural products, established through decisions of the county councils and respectively of the General Council of Bucharest Municipality in the territorial jurisdiction of which is located the leased field.

If the average prices of the agricultural products have been modified during the fiscal year in which the income was obtained, the new prices for the evaluation in lei of the income from the lease expressed in kind, for the determination of the taxable base, are applied starting with the date of 1 of the month following their communication to the regional general directorates of the public finances.

### **The determination of the net income from the lease**

The net income from the lease is established **at every payment** by deducting the gross income of the expenses determined by applying the 25% rate on the gross income.

In order to recognize the expense deductibility of 25% from the gross income, the lessor does not have the obligation to present supporting documents to the fiscal body.

The deductible expense associated to the income, established in the flat rate of 25% applied to the gross income, is the wear and tear of the leased goods and the expenses for their maintenance and repair, the ownership taxes and fees owed according to the law, the commission withheld by the intermediaries, the insurance premiums paid for the leased and rented good, respectively the possible expected losses of income from the lease, generated by the unfavorable natural conditions, such as: hail, drought, flood, fire and other similar ones.

### **The calculation, withhold and transfer of the tax:**

The calculation, withhold and transfer of the tax associated to the income from the lease is the responsibility of the lessee.

The tax on income from the lease is calculated at every lease payment, by applying the rate of 16% on the net income.

The calculated income is withheld and transferred to the state budget until the date of 25 inclusively of the month following that in which it was withheld.

### **NOTE**

**The tax associated to the income from the lease, calculated, withheld and transferred by the lessee is the final tax.**

## The calculation, withhold and transfer of the social health insurance contribution

The natural persons that obtain income from leasing agricultural goods **have to pay the social health insurance contribution** for this income.<sup>7</sup>

For 2014, the social health insurance contribution is determined by applying the rate of 5.5% on the calculation base.

**The monthly calculation base** of the social health insurance contribution for the lessor is the difference between the gross income and the deductible expense determined by applying the rate of 25% on the gross income and **cannot be lower** than the national minimum gross basic salary, if this income is the only on which the contribution is calculated. The monthly calculation base **cannot exceed** the value of 5 times the average gross salary<sup>8</sup>.

For the lessor, **the classification in the maximum limit mentioned previously is carried out by the lessee at the income payment.**

For the lessor, the obligation representing the individual contribution of social health insurance is calculated by applying the rate of 5.5% on the calculation base, is withheld and transferred by the lessee until the date of 25 inclusively of the month following that in which the income was paid.

The determination of the **annual payment obligations of the social health insurance contribution owed by the lessor**, as well as the classification in the maximum limit provided by law is carried out by the competent fiscal body, through the annual taxation decision.

In order to establish the annual payment obligations of the social health insurance contribution **owed by the lessor**, the competent fiscal body has the obligation to determine the annual income obtained as amount of annual net income for the category of income from leasing agricultural goods.

The social health insurance contributions owed during the year are deducted from the income obtained from the category of income from leasing agricultural goods, only by the competent fiscal body, when establishing the annual fiscal obligations.

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<sup>7</sup> Art. 296<sup>^</sup>21 paragraph (1) letter i) from Law no. 571/2003 related to the Fiscal code, with subsequent amendments and completions;

<sup>8</sup> **The national guaranteed minimum gross basic salary** mentioned is that established through the Government Decision. Thus, for 2014, the Government Decision no. 871/November 14<sup>th</sup> 2013 for establishing the national guaranteed minimum gross basic salary, decides:

- starting with January 1<sup>st</sup> 2014, the national guaranteed minimum gross salary is 850 lei per month;

- starting with July 1<sup>st</sup> 2014, the national guaranteed minimum gross salary is 900 lei per month.

**The average gross salary** mentioned is that used to establish the budget of the state social insurance and approved through the law of the state social insurance budget. Thus, for the fiscal year 2014, according to art. 16 from the Law no. 340 as of December 10<sup>th</sup> 2013, the Law of the state social insurance budget for 2014, the average gross salary is 2298 lei.

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The annual fiscal obligations of the social health insurance contribution are those established through the annual taxation decision.

The payment of the social health insurance established through the annual taxation decision is carried out within 60 days from the communication of the decision and the additional amounts paid are compensated or refunded according to the provisions of the Fiscal procedure code<sup>9</sup>.

### ATTENTION:

❖ **If the lessors obtain also the following income in a fiscal year, besides the income from the lease, they owe the social health insurance contribution for all this income:**

- income from salaries;
- income similar to salaries;
- income from pensions;
- income as unemployment benefits;
- income as holders of individual enterprises;
- income as members of a family enterprise;
- income as natural person authorized to perform economic activities;
- income from liberal professions;
- income from agricultural activities provided at art. 71 paragraph (1) from the Fiscal code;
- income of the type provided at art. 71 paragraph (2) and (5) from the Fiscal code;
- income from activities performed based on contracts/civil conventions concluded according to the Civil code, as well as agency contracts, except the income from activities performed based on contracts/civil conventions concluded according to the Civil code obtained by the taxpayers that perform economic activities independently or exercise liberal professions and are fiscally registered according to the legislation in force;
- income from the accounting and technical, judicial and extrajudicial expertise activity;
- income obtained by a natural person from an association with a legal person that is a taxpayer, according to the title IV<sup>1</sup>, which does not generate a legal person;
- income from associations with Romanian legal persons, for the income obtained both in Romania and also abroad from associations without legal personality.

### NOTE

The persons that obtain income from leasing agricultural goods **do not owe social contributions for this income.**

### Mandatory reporting:

- the lessees have the obligation to monthly fill in and submit the form 112 – **“The statement on the payment obligations of social contributions, income tax and nominal records of insured persons<sup>10</sup>”** in which they declare the tax on the income

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<sup>9</sup> Art. 117 from the Government Ordinance no. 92/2003 concerning the Fiscal procedure code, republished, with subsequent amendments and completions.

<sup>10</sup> Common order of the minister of public finances, minister of labour, family and social protection and the minister of health no. 1045/2084/793 from 2012 for approving the model, content, submission and

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from the lease and the individual contributions of social health insurance calculated and withheld, as well as the nominal records of insured persons.

The statement is submitted through electronic means of remote expedition, according to the law.

In order to submit the statement, the lessee must have a qualified certificate, issued according to the Law no. 455/2001 concerning the electronic signature.

The statement on the payment obligations of social contributions, income tax and nominal records of insured persons is filled in with the help of the support program. The support program is made available free of charge to the taxpayers by the subordinated fiscal units or can be downloaded from the site of the National Agency for Fiscal Administration, from the address:

[http://static.anaf.ro/static/10/Anaf/Declaratii\\_R/112.html](http://static.anaf.ro/static/10/Anaf/Declaratii_R/112.html)

- the lessees have the obligation to submit annually until February 28<sup>th</sup> of the following year to the competent fiscal body the form 205 "Informative statement on the withholding tax and the obtained gains/losses per income beneficiaries"<sup>11</sup>.

The form 205 can be viewed and downloaded from the address:

[http://static.anaf.ro/static/10/Anaf/formulare/dec\\_205\\_2014.pdf](http://static.anaf.ro/static/10/Anaf/formulare/dec_205_2014.pdf)

### ATTENTION!

- The failure to submit or the delayed submission of fiscal statements is a contravention and is sanctioned with contraventional fine<sup>12</sup>.
- The withholding and intentional failure to pay within maximum 30 days from the due date the amounts that represent withholding taxes or contributions is an **offence**<sup>13</sup> and is punished with imprisonment from 1 to 6 years.

### NOTE

**The lessors do not have declaratory obligations related to the tax and contribution of social health insurance associated to the income obtained from leasing the agricultural goods.**

### HOW TO OBTAIN ADDITIONAL INFORMATION?

Detailed information can be obtained by/from:

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management method of the "Statement concerning the payment obligations of social contributions, income tax and nominal records of insured persons", with subsequent amendments and completions.

<sup>11</sup> Presidential Order of the National Agency for Fiscal Administration no. 52/2012 for approving the model and content of forms provided in Title III from Law no. 571/2003 related to the Fiscal code, with subsequent amendments and completions.

<sup>12</sup> Art. 219 from the Government Ordinance no. 92/2003 concerning the Fiscal procedure code, republished, with subsequent amendments and completions.

<sup>13</sup> Art. 6 from Law no. 241/2005 for the prevention and fight against fiscal evasion, with subsequent amendments and completions.

- accessing the Internet page, [www.anaf.ro](http://www.anaf.ro);
- contacting the Center for taxpayer support at no. 031.403.91.60;
- the offices for taxpayer support within the public fiscal administrations.