

Tax Updates

11 May 2023



Consistent with our commitment to provide [updated information](#) on current tax issues, we set down below a brief overview of the provisions of circular E. 2031/2023 on business income arising from the performance of single or recurrent transactions with the purpose of generating profit

The recently issued Circular E. 2031/2023 of AADE (Independent Authority for Public Revenue – IAPR) refers to individuals, who perform single or recurrent transactions with the purpose of generating profit, which are taxed as business income according to article 21 par. 3 of the Income Tax Code (ITC) and provides clarifications on issues that have arisen following relevant queries submitted by taxpayers.

Article 21 par. 3 ITC: Business income arising from the performance of single or recurrent transactions with the purpose of generating profit

Article 21 par. 3 ITC includes within the meaning of “business transaction” any single act which constitutes a transaction or the “recurrent performance” of transactions in the market economy, with the purpose of generating profit. Any three (3) transactions of the same type performed within one (1) semester (or within a period of two (2) years in case the transactions relate to real estate) are considered as recurrent performance of transactions.

Issues clarified by virtue of E. 2031/2023

The provisions of E. 2031/2023 introduce the following clarifications regarding application of article 21 par. 3 ITC:

Business Transaction

- For the purposes of article 21 par. 3 ITC, a “business transaction” is a transaction performed in the market economy for a consideration in money or in kind, aiming to generate profit.
- The provisions of article 21 par. 3 ITC do not cover only the recurrent performance of transactions of the same type but also single (separate) transactions, on condition that they aim to generate profit.
- Single (separate) transactions, that come under the purposes of article 21 par. 3 ITC, concern the transfer of assets that do not come under the provisions of article 41 ITC (transfer of real estate) or article 42 ITC (transfer of securities).

- The contribution of securities to a company is not considered a “business transaction” when the individual contributing the securities is the sole shareholder/unitholder of the company receiving them (according to the provisions of articles 42 par. 4 ITC).

Profit

- Profit is defined as the difference between the acquisition price and the sale price, as these values are determined by virtue of the relevant records, documents or notarial deeds.
- The circular clarifies the method to determine the acquisition price in some very specific situations. In particular, it clarifies that in the case of acquisition by virtue of a donation, the acquisition price is determined to be the value which was used as basis for the calculation of donation tax, whereas in the case of construction of a building, the acquisition price is determined to be the construction cost plus the value of the land which corresponds to the property that was sold. If the acquisition price cannot be determined, it is considered to be zero.

The purpose of generating profit

- The “purpose of generating profit” must already exist at the time of acquisition of the asset that is subsequently sold.
- The “purpose of generating profit” is a precondition for the application of article 21 par. 3 ITC, and it should be sufficiently evidenced by the actual facts and circumstances of each case (e.g. sale performed within a short time from the acquisition in connection with the level of the sale price, the percentage of apartments sold as compared to those built, the time period that has lapsed between the construction and the sale, the acquisition of real estate in auctions and their subsequent sale etc.).

- In principle, the tax authority bears the burden to prove the existence (or not) of the purpose of generating profit.
- The circular explicitly excludes from application of article 21 par. 3 ITC the acquisition of real estate when this aims to the utilization/placement of the individual's capital, on the basis that such transactions do not have any profit generating purpose (e.g. leasing, self-occupancy of owned house, self-use of business premises, etc.).

Number of Transactions

- The number of transactions is the significant element and not the number of assets sold in each transaction, e.g. properties sold to the same buyer by virtue of one notarial deed are considered as one transaction without taking into account the number of properties, the sale of several properties to the same buyer on the same day but under different notarial deeds is considered as one transaction, however properties sold under different deeds to the same purchaser but not at the same time, are considered as different transactions based on the number of the deeds.

Excluded transactions

- As of tax year 2019 onwards, one single transfer of real estate, even with the purpose of generating profit does not fall within the scope of article 21 par. 3 ITC.
- The sale of an asset by an individual, which was acquired by such individual through inheritance or donation from relatives up to the second category or which has been maintained for more than five (5) years, does not come under the application of article 21 par. 3 ITC. This exemption concerns sales that took place even before 2018 (we note that said exemption was introduced by virtue of an amendment of article 21 par. 3 ITC, which entered into force and was applicable for tax years from 2018 onwards).
- Profits gained by individuals from the transfer of securities of article 42 ITC are taxed as capital gains and not as income of article 21 par. 3 ITC (we note that this has been applicable since 24 December 2014 onwards).
- On the other hand, it is clarified that the provisions of article 21 par. 3 ITC apply to the recurring sale of foreign currency and other investment goods (e.g. gold bars, gold pounds, precious stones, etc.) and also to single (not recurring) transfers of said assets, on condition that such transfers have the purpose of generating profit. The sale of foreign currency is specifically exempted from application of article 21 par.3 ITC, when it was acquired for investment or savings purpose or in order to cover own needs.

Reporting via income tax return (E1 Form)

- Income earned as per the provisions of article 21 par. 3 ITC is reported in codes 427-428 "Business Income of article 21 par. 3 ITC" of the income tax return of individuals (E1 Form), without requiring the commencement of business activity.

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This Newsletter aims to provide the reader with general information of the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

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