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## **DECISION 367 dated 27 May 2015 to amend and complement Methodological Norms for application of Law 571/2003 of Fiscal Code, approved by Government Decision 44/2004 (Official Gazette 373/2015)**

The Decision to update Norms for the application of the Fiscal Code has been expected for a long time. Introduction of application instructions for certain newly-introduced regulations (the new 9% VAT rate for food products) and an update of Norms for the already-amended Fiscal Code provisions (e.g. tax on construction) was necessary. The new provisions come into force starting the 1<sup>st</sup> of June 2015. The main changes are presented below.

### **VALUE ADDED TAX**

#### **VAT applied to tourism services**

In amendments to the Norms introduced by Government Decision 20/2015, certain specifications are made regarding application of the 9% reduced VAT rate for all types of accommodation within a tourist-receiving structure, offered for sale at a total price (tourist package).

The amendments mention the possibility to also apply the reduced VAT rate for alcoholic beverages, only in the case in which they are included in the total accommodation price (tourist package).

#### **Application of 9% reduced VAT rate for food products**

The custom codes (NC) of goods in which the new reduced VAT rate applies to are specified.

The 9% reduced VAT rate is applied to all goods provided within the economic delivery chain, starting with production through sale to the final consumer by all providers, regardless of their quality, producers or traders, with several exceptions.

**Example 1:** An agricultural producer sells fruit to a trader. The producer will apply the 9% reduced VAT rate. The trader will also apply the 9% VAT rate when selling the fruit, regardless of whether it is sold as food or as raw material for jam, preserves or alcohol production.

**Example 2:** A honey producer delivers honey to both retail stores, to cosmetic product companies or to producers of mead. In all these situations the 9% reduced VAT rate will be applied to the delivery of honey.

The exceptions mentioned above refer to certain categories of goods (fruit and seeds, grease and oils, gums, resin, vegetable extracts, salt, chemical products, etc.), with codes expressly specified, for which, due to their nature, the 9% reduced VAT rate is applied by the provider only if it can be proven that such goods are used to prepare food products destined for human or animal consumption or to complete or substitute food products destined for human or animal consumption.

This condition is considered to be fulfilled only if the goods are:

- a) either sold in their own retail or cash and carry stores or they are used in their own food production units, restaurants or other food service units, used to prepare food products destined for human or animal consumption or to complete or substitute food products destined for human or animal consumption;
- b) either delivered to taxable entities carrying out activities such as retail trade, cash and carry trade, restaurant, other food service or food production activities – all preparing food products destined for human or animal consumption.



In the case of importing goods provided by the list of exceptions, the reduced VAT rate is applied based on an engagement statement, which is submitted to the competent customs office upon import. The statement should prove the following:

- a) either the imported goods will be sold in their own retail or cash and carry stores or they will be used in their own food production units, restaurants or other food service units, used to prepare food products destined for human or animal consumption or to complete or substitute food products destined for human or animal consumption;
- b) either the imported goods will subsequently be delivered to taxable entities carrying out activities such as retail trade, cash and carry trade, restaurant, other food service or food production activities – all preparing food products destined for human or animal consumption.

The same conditions also apply in the case of intracommunity acquisition of goods provided by the list of exceptions.

If the taxable entity who imports, purchases from Community or delivers to Romania goods provided within the list of exceptions, cannot prove application of the 9% reduced VAT rate, then the 24% VAT rate applies, even though the entity will apply the 9% reduced VAT rate for a subsequent delivery of the same goods.

The 9% reduced VAT rate is applied for delivery, import or intra-community acquisition of notified food supplements that are mentioned on the website of Health Ministry or Institute of Food Bioresources.

In the situation where the purchase/sale is made with a package containing goods subject to both the 9% and 24% VAT rates, the VAT rate corresponding to each item applies, if the goods within the package can be separated. If not, the 24% standard VAT rate is applied to the total value of the package. An exception is when goods are offered for free in order to stimulate sales in accordance with conditions provided by the Norms.

**Example 1:** In the case of selling a basket containing food products, alcoholic beverages and cosmetic products at a combined price, the VAT rate related to each product is applied.

**Example 2:** In the case of selling a stove, where the trader includes a package of spaghetti for free, it is considered that the product is granted for free in order to stimulate the sale, and therefore the 24% VAT rate is applied to the sale of the stove.

Any combination of alcoholic and non-alcoholic beverages (regardless of alcoholic concentration) is considered an alcoholic beverage. For alcoholic beverages sold in restaurants or offered as part of catering services, the 24% VAT rate is applied. No separate delivery of goods is considered to be taking place. The offer of alcoholic beverages is part of restaurant or catering services.

**Example:** A restaurant also selling food that can be served outside its location is not considered to be providing restaurant services, but delivering goods for which the 9% reduced VAT rate is applied (including dishes or glasses in which the food and non-alcoholic beverages are served – even though their value is separately written on the fiscal bill). In this case delivery of food is considered the main delivery, and the same VAT rate applies to the dish and glass delivery, their delivery being considered an accessory delivery.

#### **Adjustment of taxation base for intracommunity acquisitions in the case of the newly-reduced VAT rate**

The most frequent adjustment situation is for advances, commercial discounts and price differences invoiced subsequent to the date when the change in VAT rate is made.

We recall that for intracommunity acquisition of goods, the applicable adjustment VAT rate is the rate in force on the date when the chargeability of tax for intracommunity acquisition intervenes.

The Norms provide the following example:

Company A from Romania receives an invoice for an advance for an intracommunity acquisition of food products amounting to EUR 1,000 and issued on the 12<sup>th</sup> of May 2015.

The tax related to intracommunity acquisition is set based on the currency exchange rate valid on the 12<sup>th</sup> of May 2015 (RON 4.41/EUR), applying the 24% VAT rate: EUR 1,000 \* RON 4.41/EUR \* 24% = RON 1,058.40.

**9% VAT  
on food starting  
1 June 2015**



In June, the company receives the invoice issued on the 16<sup>th</sup> of June 2015 for the remaining value of the intracommunity acquisition, amounting to EUR 5,000, the total amount of the purchase being EUR 6,000.

The tax related to the intracommunity acquisition is set based on the currency exchange rate valid on the 16<sup>th</sup> of June 2015 (RON 4.45/EUR) applying the 9% VAT rate: EUR 5,000 \* RON 4.45/EUR \* 9% = RON 2,002.50.

On the 5<sup>th</sup> of August 2015, the external provider issues a credit note granting a 10% discount related to the intracommunity delivery to Romania of the intracommunity acquisition by company A.

Company A has the obligation to adjust the taxation base for the intracommunity acquisition with the amounts calculated as follows:

EUR 1,000 \* 10% \* RON 4.41/EUR \* 24% = RON 105.84

EUR 5,000 \* 10% \* RON 4.45/EUR \* 9% = RON 200.25

### VAT treatment of tips

After fiscal regulation of tips (made by OUG 8/2015 - previously presented in the 4<sup>th</sup> edition of our newsletter) several critical opinions appeared within the business environment, due to technical difficulties and the lack of coherence in defining the fiscal regulations. Moreover, through several public statements made by the Minister of Public Finance, it was asserted that the taxation of tips will be eliminated from Romanian legislation. Besides that, there are several drafts meant to amend current regulation, subject to debate in Parliament.

Even though it was a surprise to see the Minister of Public Finance declaring his intention to eliminate taxation of tips in less than a month (its hasty implementation considered a mistake), the end of May brought new unpleasant surprises regarding tips by publishing the present Government Decision. Some changes referring to tips relate to VAT, and others to employee income tax (to be seen in amendments on income tax).

Regarding VAT, a difference is clearly made between situations in which, through a regulation in the form of an internal decision, amounts obtained as tips represent a gain to the company versus another source of income to employees.

It is expressly provided that tips remaining with the company (not distributed to employees) are subject to the standard 24% VAT rate, for economic operators registered under the scope of VAT as provided by art. 153 of the Fiscal Code. The tax is set by applying the gross-up method.

It is clear that the current provisions are in conflict with VAT principles and European regulations. First of all, the grant of a tip cannot be assimilated to a delivery of goods or provision of services, where leaving change and/or tips is voluntary.

In addition, there is a case regulated by the European Court of Justice (case C16/93 RJ Tolsma v Inspecteur der Omzetbelasting Leeuwarden). According to the decision in this case, activity of a musician playing his guitar on the street and occasionally receiving money from passers-by cannot be considered economic activity. Thus, in this case there is no contractual relationship between the musician and passers-by, a relationship that would oblige the latter to pay the musician a certain amount of money. The money left in the musician's box is simply a gift given by passers-by (they decide whether or not they want to pay, as well as the amount they put in the musician's box). Thus, the activity of the musician is not an operation that can be subject to VAT.

Extrapolating this case to our situation with tips, money left by customers are gifts and, therefore, cannot be subject to VAT, regardless of the fact that they belong to the company or to employees.

Going further with this analysis, there is a risk to consider, erroneously, that in the case of a donation to the company (from shareholders, the cancelation of certain debts of the company or other similar situations), VAT should be collected using the gross-up method.

We consider that this is an additional error in approach, an error that will soon be corrected.

### TAX ON CONSTRUCTION

The Norms are aligned with provisions of the Fiscal Code (amended at the beginning of 2015).



### VAT on tips?



Thus, according to the Fiscal Code, re-construction, modernization, consolidation, change or extension work for buildings that are rented, taken into administration or use are exempted from the tax on construction. The initial paragraph published in the Norms conditioned the exemption with a notification requirement of such work to the lessor in order to apply the tax on buildings (only if the value of the work exceeded 25% of the value of the space) is repealed.

We emphasize again to not confuse tax on construction with tax on buildings. They are not applicable both in the same time.

### TAX ON INCOME

Several additional clarifications are made regarding the income tax exemption for disabled persons (individuals with a severe or accentuated handicap).

Additional specifications are made regarding the deduction of mandatory social contributions from the taxation base for income obtained from rental activities, regardless of whether net income is set using the real system, or based on either income or fixed expense quotas. The deduction is made by fiscal authorities.

Tips are included in the category of income obtained from other sources (art. 78), being subject to 16% taxation. This provision was adopted a day after the Senate adopted a draft law through which provisions related to tips and its taxation were eliminated from current legislation. This draft law should be passed by the Chamber of Deputies, afterwards promulgated by the President and published in the Official Gazette. After all these steps, the draft law becomes applicable. As we already mentioned when we presented the application of VAT for tips, the lack of coherence and contrary regulation of certain fiscal aspects, almost at the same time, is surprising. It is important to mention an aspect that was probably not taken into consideration by the Government. By inclusion of tips in the category of income obtained from other sources, we may have the unpleasant surprise of seeing them subject to health insurance contributions, according to art. 269<sup>^</sup>29 para. (5) of the Fiscal Code.

The regulation of tips remains a controversial subject that will probably be repealed soon.

### DRAFT LAW – AMENDMENTS FOR COMMERCIAL COMPANIES

A draft Law was recently approved by the Chamber of Deputies (decisional forum), and has now been submitted to the President for promulgation (and afterwards it should be published in the Official Gazette). The adopted form may be considered final. The new provisions will amend and complement both regulations regarding registration at the Trade Register and legislation on companies.

#### Identification of companies enrolled with Trade Register

According to the new draft Law, an additional identification element will be introduced for companies in relation to the Trade Register.

The Trade Register (both its central ONRC unit and territorial offices ascribed to justice courts) will be included in a European system that will contain all trade registers in all European Union Member States – a **trade register interconnection system**.

In order to identify individuals and legal entities enrolled with the Trade Register in Romania within the European system, a new identification code will probably be assigned – a **unique identifier at European level (EUID)**. This identifier will include the identification element for Romania, the identification element of the National Register, the number of individual/entity in the respective register and, if necessary, other elements in order to avoid identification errors.

Thus, besides the existing codes given to taxpayers enrolled with the Trade Register (order number at the Trade Register and fiscal registration code), a new code may be provided – a unique identifier at European level.

Also, when registering, applicants will receive a registration certificate containing Trade Register number, fiscal registration code assigned by the Ministry of Public Finance as well as (if applicable) the **unique identifier at European level EUID** and other data, set by order of the Minister of Justice.

New dispositions referring to the unique identifier at European level (EUID) would be applied starting the 7<sup>th</sup> of July 2017.




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**Companies will  
have soon a  
unique identifier  
at European level  
(EUID)**

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## Dissolution of commercial companies

This new law brings several clarifications regarding situations in which dissolution of a company may be pronounced. For example, non-submission of annual financial statements (individual or consolidated, if applicable) or accounting reports within 60 days from the legal deadline, may cause dissolution of the company by court decision, upon request of a person of interest or by the Trade Register.

A company may also be dissolved when it does not fulfil conditions related to permanent headquarters, following the expiration date of the document/contract attesting the right/transfer of the right to use the location as permanent headquarters.

Moreover, if the company's activity ceases or it does not re-start after a period of temporary inactivity, where fiscal authorities and the Trade Register were notified, if this period exceeds three years from being recorded at the Trade Register, then the company may be dissolved.

The list of companies for which the Trade Register will initiate dissolution actions will be published on its website or on the portal of online services within **at least 15 calendar days prior to taking action**. At the same time, the court's decision on dissolution will be **communicated to the company**, this practice being newly introduced (currently, this does not happen).

### ORDER 513 dated 30 April 2015 to approve template and content of ledger for personal money, as well as procedure to register with the fiscal authority (Official Gazette 300/2015)

The Order approves template and content of the ledger for personal money of mostly sales employee/restaurant wait staff, stemming from amendments to legislation regarding cash registers by OUG 8/2015. Additional information on this subject is available in our previous edition (available on our website).

The ledger for personal money should be introduced for each unit which sells goods or provides services. The ledger has pages numbered in increasing order and is signed on the last page by the manager of the economic operator or by a person empowered by the manager.

The ledger is completed on a daily basis by the staff of the economic operator who carry out activity in the unit for selling goods or providing services. The ledger is prepared at the beginning of the work schedule, without erasures, modifications or unused spaces.

The ledger is kept at the unit which sells goods or provides services, in order to be presented to fiscal inspection authorities. An economic operator may use a single ledger for personal money for each unit for selling goods or providing services.

The Order also establishes the obligation of all economic operators to notify the fiscal authority regarding the introduction of the ledger for personal money, mentioning the date when it was used for the first time and the number of pages, according to their numbering system. This notification should be sent within 5 work days from the date when this Order was published (the 8<sup>th</sup> of May 2015).

### ORDER 528 dated 6 May 2015 to approve Procedure of recovery of amounts representing taxes or other income to State Budget, overpaid or unduly paid and for which there is no obligation to declare (Official Gazette 328/2015)

The Order regulates the modality to refund amounts paid to the State Budget beyond legal obligations or amounts paid regarding a future benefit, that eventually was not received and for which there is no obligation to declare. These amounts were received by authorities or public institutions. The modality is provided by art. 21 para. (4) and art. 17 para. (1) of the Fiscal Procedure Code.

To recover such amounts, applicants should submit an application/claim to the authority or public institution that did not provide the required benefit or to which they made an additional payment besides the legal obligation. The application is a request to recover amounts paid in excess or unjustifiably paid, for which there is no obligation to declare.

The application should attach copies of payment documents to the application/claim and should contain the following elements:

- a) name of applicant;
- b) fiscal registration code;



**Any company  
failing to submit  
financial  
statements may be  
dissolved**





**NBR's reference  
interest rate  
dropped to 1,75%**

- c) fiscal domicile of applicant;
- d) amount and nature of funds requested for recovery;
- e) IBAN code where the amount should be deposited (if the applicant does not want to receive cash)
- f) name of the bank where the account is opened;
- g) identification data of the fiscal authority to which the applicant is ascribed;
- h) reason for which recovery of the amount is requested, the legal basis for this request and (if applicable) supporting documents.

The authority or public institution verifies the application and issues a recovery decision within 15 days. The recovery decision is sent to the State Treasury unit where the authority or institution is ascribed within 3 days, and this unit will send it to the State Treasury unit where the taxpayer is ascribed. The taxpayer's fiscal authority is informed regarding this decision, which in turn will perform verification of the situation of the taxpayer's fiscal liabilities. If there are outstanding amounts due/debts, the requested amount will only be refunded after payment of debts.

In the case of legal entities, amounts are only recovered through bank settlement, to the bank account indicated on the application. In the case of individuals, the recovery will be performed either by bank transfer (to the account indicated on the application) or cash (for amounts of less than RON 500). Cash payment is disbursed at the State Treasury unit cash desk based on the recovery/reimbursement note.

#### **INSTRUCTION 17 dated 6 May 2015 on the NBR reference interest rate (Official Gazette 316/2015)**

As of the 7<sup>th</sup> of May 2015, the NBR reference interest rate is 1.75% per year.

#### **LAW 97 dated 7 May 2015 to amend art. 137 para. (1) of Law 53/2003 – Labour Code (Official Gazette 316/2015)**

The Law rephrases provisions of art. 137 para. (1) of the Labour Code, referring to weekly rest. Thus, weekly rest means 48 consecutive hours of rest, usually Saturday and Sunday. Previously the weekly rest was granted for two consecutive days, usually Saturday and Sunday.

#### **LAW 117 dated 21 May 2015 to approve OG 12/2014 to amend and complement Law 11/1991 to combat unfair competitive practices and other acts within the field of unfair competition (Official Gazette 355/2015)**

The Law approves OG 12/2014 amending Law 11/1991 on combating unfair competition. The Law also amends Law 11/1991. Thus, the notion of *individual* is defined – any former or current employer/representative of an enterprise or any other person carrying out unfair competitive practices.

Offences carried out by individuals will be sanctioned with fines of between RON 5,000 and RON 10,000 (previously RON 1,000 and RON 5,000).

The Law mentions that any person who has a legitimate interest may directly address themselves to competent courts of justice in order to stop and forbid unfair competitive practices, to cover patrimonial and moral losses recorded as a result of an unfair competitive practice, without the requirement to follow a certain procedure/formality with the Competition Council.

Actions carried out through an unfair competitive practice are in the jurisdiction of the court located in the same location/town/city where the offense occurred or where the headquarters of the respondent is located. In case there are no headquarters, then the competent court is the one which is located in the same territory as the respondent's domicile.

#### **ORDER 572 dated 14 May 2015 to amend and complement Procedure for electronic communication between ANAF and individuals, approved by Order of the Minister of Public Finance 1154/2014 (Official Gazette 355/2015)**

The Order amends the procedure for electronic communication between ANAF and individuals.

Thus, individuals may opt to send and receive fiscal administrative documents issued in electronic format by fiscal authorities by electronic means. This would be possible by



accessing *Virtual Private Space*.

In this situation, no other communication modality for fiscal administrative documents is used.

The Order also regulates conditions to submit tax returns by using the *Virtual Private Space* service. In this regard, submission of tax returns by an individual consists of providing the data requested in the form present in the application available in *Virtual Private Space*. Once the data is introduced, the individual may send a file containing the image of supporting documents related to the introduced data. Based on the data introduced by the individual and on the file with supporting documents, the tax return is automatically generated according to an approved template. The tax return is signed with a Ministry of Public Finance qualified digital certificate and is made available to the individual through the *Virtual Private Space* service. The tax return is automatically uploaded on the **channel** for submission of tax returns.

The Order also updates the list of documents that may be communicated through *Virtual Private Space* service.

### **(A) Documents issued by fiscal authority and communicated to taxpayer**

#### **a) Automatically**

- o Annual taxation decisions related to income obtained starting 2013
- o Taxation decisions for income tax/health insurance contributions advance payments, as well as for social security contribution obligations (form 260) for income obtained starting 2015
- o Taxation decisions on advance payment of social health insurance contributions for rental income (form 650) obtained starting 2015

#### **b) Upon taxpayer request**

- o Situation of tax liabilities to be paid before the date of ...
- o Note of payable tax liabilities
- o Situation of social security contributions declared by employers
- o History of operations and Register of electronic documents communicated via *Virtual Private Space*
- o Fiscal Certificate
- o Income Certificate

### **(B) Documents issued by taxpayer and communicated to fiscal authority**

- o Application to request *Situation of tax liabilities to be paid before the date of ...*
- o Application to request *Note of payable tax liabilities*
- o Application to request *Situation of social security contributions declared by employers*
- o Application to request *History of operations and Register of electronic documents communicated via Virtual Private Space*
- o Application to request issuance of Fiscal Certificate
- o Application to request an Income Certificate
- o Statement regarding the income obtained in Romania (form 200) starting 2014
- o Application regarding destination of amount representing 2% donation of annual income tax (form 230) related to annual income tax due starting 2014
- o Application of estimated income/income quota (form 220) for income obtained starting 2015

### **ORDER 1069 dated 22 May 2015 to set indexed face value of a luncheon ticket for the first half of 2015 (Official Gazette 374/2015)**

Starting May 2015, the value of a luncheon ticket increases from RON 9.35 to RON 9.41.

### **ORDER 1070 dated 22 May 2015 to set monthly amount which is granted in the form of nursery vouchers for the first half of 2015 (Official Gazette 373/2015)**

The Order maintains an unchanged value of the monthly amount granted for nursery vouchers of RON 440 (the same amount since November 2014).




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**Facilities on  
communication by  
electronic means  
between ANAF and  
individuals**

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- the announcement prepared on computer, signed and stamped by the legal representative of the company. A model may be downloaded from [http://www.monitoruloficial.ro/docs/373\\_anunt.pdf](http://www.monitoruloficial.ro/docs/373_anunt.pdf)
- an appendix disclosing the number of characters in the announcement;
- a power of attorney for the person who will submit the document for publication;
- the document which proves payment of the fee for publication;
- company details (contact person, phone number).

The appendix disclosing the number of characters in the announcement may be obtained from a text editor and, for instance, if drafted using Microsoft Word:

- select the full text to be published (Ctrl-A);
- select Word Count on the bottom left bar (Tools);
- copy the displayed window by pressing Alt-Print Screen at the same time;
- copy the selected image with the "paste" command by pressing Ctrl-V simultaneously, and print.

**Where and how may the fee for publication be paid?**

- at the cashier's desk located in the centre for public inquiries at the Official Gazette;
- by payment order upon receipt of the invoice which is issued for documents transmitted by fax. The invoice also includes the price of one copy of the Official Gazette.

**How to obtain the Official Gazette of Romania, Part IV-a?**

- at the library located in the centre for public inquiries at the Official Gazette;
- by e-mail for subscribers, on the publication date, in electronic format of the Official Gazette, Part IV-a;
- by mail or, in case of documents transmitted by fax, after printing.

**INFORMATION - Statement 222 – Informative statement regarding inception/termination of activity of individuals who carry out their activity in Romania and who obtain salary income abroad**

Any entity in Romania where individuals carry out their activity for which they receive a salary abroad must complete the form, "Informative statement regarding inception/termination of activity of individuals who carry out their activity in Romania and who obtain salary income abroad," code 14.13.01.13/5i.

**Obligation**

The category of entities which must submit the informative statement includes representative offices in Romania of foreign companies, associations, foundations or organisations where headquarters are located abroad as well as international organisations and entities which operate in Romania.

Two original copies of the statement are prepared:

- the original is submitted to the tax authority office administering the individual or legal entity where the individual carries out his/her activity;
- a copy is kept by the individual or legal entity where the individual carries out his/her activity.

For each individual who obtains salary income abroad for activity carried out in Romania, an informative statement is completed and submitted.

**Deadline for submission of Statement 222**

The form is submitted to the appropriate tax authority or sent by registered mail, and, each time events regarding inception/termination of activity supported by documents which rule the labour relationship occur, within **15 days** starting effective date of the event.

Legal basis: ANAF President Order 52/2012 to approve model and content of forms set at Title III of Law 571/2003 – Fiscal Code, with its further amendments and complements.

**INFORMATION – Assessment of fiscal residence in Romania of individuals**

**Issues which support fiscal residence in Romania**

The main issues which will be taken into account for determination of the fiscal residence of an individual in Romania are the following:

- the domicile in Romania;
- the permanent address in Romania of the individual, lodging which may be his/her property or rented, but remains at his/her disposal or at his/her family's disposal at



**Do not forget the obligation to publish an announcement regarding the submission of annual financial statements**

all times;

- the centre of vital interest is located in Romania;
- the individual is present in Romania for one or several periods which exceed a total of 183 days during any period of 12 consecutive months which ends in the concerned calendar year.

### Assessment of fiscal residence

The non resident individual must submit the following form to tax authorities: "Questionnaire to determine fiscal residence of individuals upon arrival in Romania," within 30 days after occurrence of the 183 days of stay in Romania.

The non resident individual will attach the following to the form:

- copy of unexpired passport and, for European Union citizens, copy of unexpired passport or unexpired national identity card;
- certificate of fiscal residence issued by the authority in charge of the State with whom Romania has concluded an agreement to avoid double taxation or another document issued by an authority other than tax authorities with attributions in the field of certification of fiscal residence as per domestic legislation of this State, in original or legalised copy, accompanied by an authorized translation in Romanian, the certificate/document being valid for the year/years for which it is issued;
- documents which prove the existence of lodgings for the individual in Romania, lodgings which may be his/her property or rented, but remains at his/her disposal or at his/her family's disposal at all times.

Tax authorities will assess whether residence conditions are met in correlation with the actual position of the individual, taking into consideration provisions of treaties to avoid double taxation and provisions of the Fiscal Code, if applicable, as well as the file submitted, and will establish whether the non resident individual keeps fiscal residence in the other State as per the treaty to avoid double taxation or will be a fiscal resident in Romania.

Within 30 days starting submission date of the form, tax authorities will notify the individual whether he/she is subject to full fiscal obligations in Romania or he/she will only be taxed on income obtained in Romania. In case of full fiscal obligations, the resident individual will be subject to income tax upon income, irrespective of its source, he/she obtains in Romania and outside Romania.

If applicable, in respect of the file submitted by the individual for assessment of his/her fiscal residence in Romania, if modifications occur vs. data disclosed in the notification issued by tax authorities, a new notification will be issued to cancel the former and to correct fiscal obligations of the individual in Romania considering new information provided.

### Assessment of fiscal residence upon departure of individuals from Romania

In the scope of deregistering or maintaining evidence with tax authorities, the resident individual in Romania and the non resident individual must submit the "Questionnaire to determine fiscal residence of individuals upon departure from Romania" 30 days prior to his/her departure from Romania with tax authorities where the "Questionnaire to determine fiscal residence of individuals upon arrival in Romania" was submitted, if the person has not communicated his/her change of domicile/permanent address.

Tax authorities will assess whether residence conditions are met in relation to the actual position of the individual, taking into consideration provisions of treaties to avoid double taxation and provisions of the Fiscal Code, if applicable, as well as the file submitted and any other document which may support assessment of the individual's fiscal residence as well as the certificate of fiscal residence issued by the authority in charge of the State with whom Romania has concluded an agreement to avoid double taxation or another document issued by an authority other than tax authorities with attributions in the field of certification of fiscal residence, and will establish whether the resident individual in Romania keeps his/her fiscal residence in Romania as per the treaty to avoid double taxation and provisions of the Fiscal Code, or will not be considered a fiscal resident in Romania.

Within 15 days starting the submission date of the form, tax authorities will notify the individual whether he/she continues to be fully subject to Romanian fiscal obligations or




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## Assessment of the fiscal residence in Romania of individuals – main steps and formalities

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whether he/she will be deregistered or maintained in tax authority evidence. In case of full fiscal obligations, the resident individual continues to be subject to tax on income, irrespective of its source, he/she obtains in Romania and outside Romania.

If, further to submission of the form, the resident individual in Romania, with his/her domicile in Romania, provides proof of his/her change of residence in a State with whom Romania has concluded a treaty to avoid double taxation, he/she will attach to the above mentioned form the certificate of fiscal residence issued by the authority in charge of the State which considers him/her a fiscal resident or another document issued by an authority other than tax authorities with attributions in the field of certification of fiscal residence in order to apply provisions of the treaty. The resident individual in Romania, with his/her domicile in Romania, will continue to be considered a resident in Romania, having in Romania full fiscal obligations through the end of the calendar year when he/she provided proof of change of fiscal residence in another State with whom Romania has concluded a treaty to avoid double taxation.

The resident individual in Romania, with his/her domicile in Romania who departs to a State with which Romania has not concluded a treaty to avoid double taxation completes the form, "Questionnaire to determine fiscal residence of individuals upon departure from Romania" and continues to be subject to income tax, irrespective of its source, in Romania and abroad for the calendar year in which the individual departs from Romania as well as for the next 3 calendar years.

The non resident individual who was required to complete the form, "Questionnaire to determine fiscal residence of individuals upon arrival in Romania" and has obtained tax residence in Romania for a period of stay in Romania will only complete the form, "Questionnaire to determine fiscal residence of individuals upon departure from Romania," upon departure from Romania, and will not consider this proof of his/her change of fiscal residence in another State. This individual will be considered a fiscal resident in Romania until the end of the calendar year when he/she departs from Romania also having full fiscal obligations in Romania for this year.

A non resident individual who, during his/her stay in Romania, has proved he/she is tax resident in a State with which Romania has concluded a treaty to avoid double taxation and who had the obligation to complete the form, "Questionnaire to determine fiscal residence of individuals upon arrival in Romania" will complete the form, "Questionnaire to determine fiscal residence of individuals upon departure from Romania," upon departure from Romania.

### Forms

In summary, forms used for assessment of fiscal residence are the following:

1. "Questionnaire to determine fiscal residence of individuals upon arrival in Romania". This form is completed by individuals who arrive in Romania or who stay in Romania for one or several periods where the total length of time exceeds 183 days during any period of 12 consecutive months which ends in the calendar year. Completion of this form is not mandatory for foreigners with a diplomatic or consular status in Romania, foreigners who are civil servants or employed by an international and intergovernmental organization registered in Romania, foreigners who are civil servants or employed by a foreign State in Romania, or their family members in compliance with general regulations of international law or provisions of special agreements to which Romania is part.
2. "Questionnaire to determine the fiscal residence of individuals upon departure from Romania". This form is completed by resident individuals in Romania and by non resident individuals who are required to complete the above mentioned questionnaire when they leave Romania and will stay abroad for over 183 days within a calendar year. Filing this form is not mandatory for Romanian citizens who work abroad as civil servant or are employed abroad by the Romanian State.
3. "Notification regarding meeting conditions for fiscal residence as per provisions of articles 7 and 40 paragraph (2)-(6) of Law 571/2003 – Fiscal Code, with its further amendments and complements, or the Treaty to avoid double taxation concluded between Romania and .....for individuals upon arrival in Romania and who stay more than 183 days".




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**When you leave  
Romania, do not  
forget to request  
deregistration  
with Romanian tax  
authorities**

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**1 June is a legal  
holiday being  
Pentecost Monday**



4. " Notification regarding meeting conditions for fiscal residence as per the provisions of articles 7 and 40 paragraph (2)-(7) of Law 571/2003 – Fiscal Code, with its further amendments and complements, or the Treaty to avoid double taxation concluded between Romania and .....for individuals upon departure from Romania and who stay abroad more than 183 days”.

#### Submission of forms

Forms are submitted in paper format to the local tax authority office or sent by registered mail. Legal basis: MFP Order 74/2012 to rule issues regarding fiscal residence of individuals in Romania, published in the Official Gazette 73 dated 30 January 2012.

#### REMINDER – Valuation of monetary items in foreign currency

The May closing NBR exchange rates to use for valuation of monetary items (cash on hand, receivables, payables) denominated in foreign currency, as well as receivables and payables denominated in RON but pegged to a foreign currency for collection/disbursement are:

1 EUR = 4.4395 RON; 1 CHF = 4.2929 RON; 1 GBP = 6.1797 RON; 1 USD = 4.0409 RON.

#### JUNE 2015 – AGENDA

##### Every day - do not forget

- To complete the petty cash register (or print electronic version)
- To complete the purchase ledger and sales ledger
- To update electronic employee registers with information regarding labour contract inception/amendment or termination, if any

##### At month end - do not forget

- To complete the journal ledger
- To register contracts concluded during the month for services rendered by non residents, with tax authorities as per article 8 point 7<sup>1</sup> of the Fiscal Code
- To revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month
- To organize a stock count of inventories if the enterprise does not use a perpetual inventory system
- To issue final invoices for the month of June 2015

##### To comply with requirements regarding VAT

- Mention the registration code under the scope of VAT on documents for EU business partners
- Check the validity of the registration code under the scope of VAT mentioned on invoices received
- Check the amount of VAT disclosed on invoices received
- Check references related to VAT (e.g.: “reverse charge”, “operation not subject to VAT”, etc...)
- On invoices, write VAT amount received in case of reverse charge
- Maintain the ledger of goods received
- Maintain the ledger of non-transfer of goods
- Mention which exchange rate will prevail (NBR or commercial bank) in contracts with foreign partners

##### During the month - do not forget that

**Monday 1 June is a legal holiday, Pentecost Monday**

**Tuesday 2 June is the last day to submit to ANAF the annual accounting report\* for entities which have opted for a financial year different from calendar year as per article 27 (3) of Accountancy Law 82/1991 republished and for sub units opened in Romania by resident companies in EEA States**

**Tuesday 2 June is the last day to submit Annual Financial Statements\* as at 31 December 2014**

- for commercial companies, national companies, “regii autonome,” national institutes for research and development;
- for sub units in Romania which belong to legal entities with headquarters abroad, except for sub units opened in Romania by resident companies in EEA States.

### Monday 8 June is the last day to submit

- ☑ Form 092 (*amendments*) to change VAT return periods from Quarterly to Monthly in case an EU acquisition of goods occurred in May 2015. Starting June 2015, VAT returns shall be submitted monthly.

### Wednesday 10 June is the last day to submit

- ☑ Return on collection of hotel tax
- ☑ Return for mentions (*amendments*) or deregistration under the scope of VAT in case of entities registered under the scope of VAT as per article 153 of the Fiscal Code which, during the previous year, do not exceed the exemption threshold set at article 152 of the Fiscal Code (form 096).

### Wednesday 10 June is the last day to pay

- ☑ Hotel tax
- ☑ Advertising service tax

### Monday 15 June is the last day to submit

- ☑ INTRASTAT statement for May 2015 (standard or extended submitted on-line)
- ☑ Statements of acquisitions and supplies in the field of energy in May 2015.

### Monday 15 June is the last day to pay

- ☑ Tax on billboard advertising (2<sup>nd</sup> instalment).

### Thursday 25 June is the last day to submit

- ☑ State Budget liability return (form 100)\*
- ☑ Return regarding social contributions, income tax and nominative list of insured persons (form 112)\*
- ☑ VAT return (form 300)\*
- ☑ Special VAT return for VAT non payers (form 301)\*
- ☑ Statement regarding amounts deriving from VAT adjustments (form 307);
- ☑ VAT return regarding VAT due by taxable entities which registration code under the scope of VAT was cancelled as per article 153 point (9) letters a)-e) of the Fiscal Code (form 311);
- ☑ Recapitulative statement of EU Supply/acquisitions/services (form 390)\* for May 2015
- ☑ Informative Statement on domestic supply/services rendered and acquisitions regarding May 2015 (form 394)\*
- ☑ Statement of salary income obtained from abroad by individuals who carry out activity in Romania and by Romanian citizens who are employees of diplomatic missions and consular posts accredited in Romania (form 224)
- ☑ Environment Fund Statement (excluding "ecotax").

### Thursday 25 June is the last day to pay

- ☑ Excise taxes
- ☑ VAT
- ☑ Liabilities to the sole bank account – **State Budget**
  - Tax on crude oil and natural gas from domestic production
  - Withholding tax on non resident income
  - Income tax on salary (*separate bank transfer for headquarters and each secondary establishment*)
  - Tax on income from independent activities, withheld at source
  - Tax on dividends paid in May 2015
  - Tax on interest income
  - Tax on investment income
  - Tax on pension income
  - Tax on income from prizes and gambling
  - Tax on income from other sources
  - Contribution for non-employment of disabled persons for employers with headcount over 50
- ☑ Liabilities to the sole account – **Public Insurance Budget and special funds**
  - Social security contribution (*pension*)
  - Health insurance contribution
  - Medical leave contribution and health insurance allowance




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**Do not forget  
the deadlines to  
submit the tax  
returns**

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- Unemployment contribution
- Contribution to fund to guarantee payment of salary liabilities
- Contribution to work accident and occupational disease fund
- ☑ Tax on Representative Office (1<sup>st</sup> instalment - 50% of the lump sum tax of Euro 4,000)
- ☑ Annual license fee for gambling operators pertaining to Quarter III 2015
- ☑ Income tax (advance payment) for Quarter II 2015 for taxpayers who obtain income from independent activities, rental revenue, agricultural revenue (taxed on actual basis), forestry and fishery
- ☑ Health insurance contribution for Quarter II 2015 due by taxable entities referred to in Fiscal Code article 29621, para. (1), let. a) - e), h) and i): individual entrepreneurs, members of a family enterprise, licensed individuals (PFA), freelancers, individuals obtaining income from intellectual property rights, on which income tax is calculated on the basis of the information from single entry bookkeeping, individuals deriving income from rental activities, persons deriving income from forestry, fishery and those deriving income from agricultural activities (for which no income quota was set and income is taxed on actual basis).
- ☑ Contribution to Environment Fund ("ecotax" excluded).



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### IMPORTANT

All forms mentioned above as well as guidance on their preparation may be downloaded from the Ministry of Public Finance website: [www.mfinante.ro](http://www.mfinante.ro)

Tax returns noted with an asterisk (\*) may be submitted by remote means of electronic transmission by large and medium size taxpayers as well as by taxpayers which have opted to file their returns on-line and which hold a digital certificate.

**Do not forget  
the deadlines to  
pay the taxes**



### KEY HR FIGURES

2015 Contributions	Employer and Beneficiary of activities considered dependent activities (% rate)	Employee and provider of dependent activities (% rate)
Social security contribution ( <i>pension</i> )	15.8% for normal working conditions 20.8% for particular working conditions 25.8% for special working conditions (contribution base capped at an amount representing the average amount of insured persons during the month for which the contribution is determined as 5 times the average monthly gross salary) <sup>1</sup> <b>(applicable for income related to October 2014 forward)</b>	10.5% (contribution base per employee capped at 5 average monthly gross salaries according to Budget for public social insurance, i.e. 5 x 2,415 = RON 12,075) <sup>1</sup> (contribution base for a person under civil contract: gross income)
Health insurance fund (based on gross salary)	5.2%	5.5%
Medical leave contribution and health insurance allowance (based on gross salary)	0.85%	
Unemployment fund (based on gross salary)	0.5%	0.5%
Work accident and occupational disease fund (based on gross salary) <sup>2</sup>	0.15% - 0.85% depending on CAEN code for main activity	
Contribution to fund to guarantee payment of salary liabilities (based on gross salary) <sup>3</sup>	0.25% (only for employees under labour contract included for retired persons)	
Salary tax		16%
Contribution for non-employment of disabled persons (for employers with more than 50 employees)	4 x 50% minimum gross salary (RON 975) for every 100 employees	
Minimum monthly gross salary as per Government Decision 1091/2014	RON 975 (starting 1 January 2015)	
Luncheon voucher - employee subject to salary starting May 2015	RON 9.41	
Per diem (in Romania) Employees in the public sector Employees in the private sector (x 2.5)	RON 17.00 (starting 27 January 2015) RON 42.50 (starting 27 January 2015)	

Note 1: Contribution to pension is also due during periods when the insured person benefits from medical leave and health insurance allowances. For these periods, the contribution base is 35% of the average monthly gross salary corresponding to the number of business days of medical leave.

Note 2: Contribution for work accident and occupational disease is also due during periods when the insured person benefits from medical leave and health insurance allowances. For these periods, the contribution base is the minimum gross salary where payment is guaranteed on a national basis corresponding to the number of business days of medical leave.

Note 3: The contribution to fund to guaranteed payment of salary liabilities is also to be calculated for health insurance allowances but only in respect of the first 5 days of temporary incapacity to work supported by the employer as well as for allowances for temporary incapacity to work further to a work accident or occupational disease but only in respect of the first 3 days of temporary incapacity of work supported by the employer.

Be Aware! Income paid to a person who carried out an activity considered dependent activity (example: in-house "captive" PFA or who meets at least 1 out of the 4 re-qualification criteria mentioned in OUG 82/2010) is disclosed on a separate "Payment statement" and is included on form 112.

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**Our Mission:**

**Adding Value to Client's Business**

*APEX Team includes qualified professionals able to provide a full range of accounting and payroll services. Our consultants are ready to share their knowledge and experience gained whilst working in Romania as consultants for one of the Big 4 international companies, having many international companies acting in a wide range of industries as clients.*

*The team includes chartered accountants (Romanian Chartered Accountants Body and also ACCA) specialised in accounting for business entities, as well as a group specialised in payroll administration on behalf of the client.*

*APEX Team provides a full range of accounting services, payroll services, local tax compliance and tax advice, as well as services tailored to your company needs:*

- Bookkeeping
- Recurring accounting assistance
- Payroll computation and additional HR services
- Accounting and tax advice « on line »
- Consulting and assistance in drafting transfer price files
- Start up services
- Organization of the accounting function
- Assistance in implementation of ERP
- Training