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EMERGENCY ORDINANCE 148 dated 4 November 2008 to amend Law 53/2003 – Labour Code (Official Gazette 765/2008)

Among the amendments brought by this Ordinance, we mention:

- ☑ **The labour book will document until 31 December 2010 seniority at work.** On 1st January 2011, the provisions of Decree 92/1976 regarding labour books will be abrogated.
- ☑ After 1st January 2011, seniority at work as at 31 December 2010 will be restated upon request by individuals who do not hold labour books to judicial courts specialised in labour litigation based on written documents or other means which prove the existence of a labour relationship.
- ☑ Employers which keep and maintain labour books will progressively remit them to the named employee by 30 June 2011 by concluding an individual statement of receipt.
- ☑ Labour Inspectorates ("ITM") which hold labour books will remit them to the named employee by 30 June 2011 under regulations to be defined by an Order of the Labour, Family and Equal Opportunity Ministry.

RESOLUTION 1 dated 11 November 2008 of the Committee for fiscal procedures (Official Gazette 770/2008)

- ☑ In case a taxpayer **changes** its fiscal regime during the fiscal year as per article 1071 of the Fiscal Code **from a micro enterprise regime to a corporate tax regime, payroll contributions and taxes are to be declared monthly** (vs. quarterly) starting the first month following the quarter when the taxpayer became liable for corporate tax.
- ☑ Starting the date Law 85 enters into force regarding insolvency procedures, a taxpayer involved in a judicial reorganization procedures and insolvency procedure, if applicable, no longer owes fiscal liabilities and not longer calculates fiscal obligations associated with liabilities officially declared as liabilities to creditors as well on those which derive from current activity, irrespective the date of inception of these procedures.

LAW 200 dated 21 October 2008 to approve Government Emergency Ordinance 91/2007 to amend and complement norms in the field of social welfare (Official Gazette 725/2008)

Social insurance contributions are not due on amounts which represent:

- ☑ Benefits supported by the Budget of State Social Insurance including allowances granted in case of work accident and occupational disease;
- ☑ Daily allowances in case of travel and delegation, delegation allowances, secondment and transfers, author's rights as well as revenue from civil or cooperation contracts;
- ☑ Profit sharing by the employees.

LAW 284 dated 14 November 2008 to approve Government Emergency Ordinance 52/2008 to amend and complement Law 31/1990 regarding commercial companies and to complement Law 26/1990 regarding Trade Register (Official Gazette 778/2008)

Among the amendments brought, we mention a new provision in case of reduction of share capital of a company: the court can constrain the company to grant, upon request, relevant guarantees to creditors to whom the company has liabilities with at the date the reduction of the company share capital is published. The obligation to grant guarantees is decided if it is reasonably assessed that the reduction in share capital jeopardizes the possibility of creditors being able to recover their receivables.

ORDER 1498 dated 31 October 2008 to approve the model and content of form 301 "Special VAT form for non VAT payers" (Official Gazette 743/2008)

This Order has introduced new provisions so that the form is in harmony with the provisions of GEO 127/2008 regarding submission of a Special VAT form prior to the registration of a new vehicle in Romania but no later than the 25th of the month following the month when the generating event occurred, i.e. the EU acquisition and operations set in Section 3 of the form. If applicable, during the same month, the person liable for VAT makes several acquisitions of new vehicles in the EU several 301 forms will be submitted in respect of this month without ticking the box "Adjusted return". Form 301 is to be used to declare fiscal liabilities starting November 2008.

LAW 264 dated 7 November 2008 to amend Government Emergency Ordinance 28/1999 regarding mandatory use of fiscal cash registers by economic operators (Official Gazette 767/2008)

Among the amendments brought, we mention that article 4 point 6 letter 3 of Government Ordinance 28/1999 has been abrogated. Economic operators are no longer obliged to disclose on a special register personal funds from employees or the Director which are put in the cash register at the start of the day's business so that change may be given to clients. Economic operators are no longer required to and to record these personal funds as part of the opening balance of the cash register.

LAW 211 dated 21 October 2008 to amend and complement Government Ordinance 99/2000 regarding marketing goods and services (Official Gazette 736/2008)

A new disposition forbids providing the consumer with his/her change in a form other than money. Fines are set for non-compliance.

INSTRUCTION 35 dated 3 November 2008 regarding the reference interest rate of the National Bank of Romania (NBR) for the month of November 2008 (Official Gazette 751/2008)

For the month of November 2008, the NBR reference interest rate is 10.25 % per annum.

RESOLUTION 1368 dated 28 October 2008 to increase the number of work permits which can be granted to foreigners in 2008 (Official Gazette 746/2008)

The number of new work permits which can be granted to foreigners in 2008 initially set at 10,000 has been increased to 15,000. According to information published by the Romanian Office for Immigration, over 13,000 applications for a work permit have been filed during the first 9 months of 2008. This resolution regards foreigners who wish to become employees in Romania as well as employees of foreign employers who are in secondment in Romania. We remind that UE and EES citizens do not need a work permit to be employed or seconded in Romania

ORDER 7579 dated 27 October 2008 to amend and complement Order 9988/2006 to approve technical norms to complete, use and print simplified forms and the sole administrative document (Official Gazette 745/2008)

Provisions to complete the sole administrative document set in appendix 2 and 3 of Order 9988/2006 regarding organisation and operation of the National Customs Authority are amended. The new regulations aim to simplify the formalities for the trade of goods and enter in force on 1st December 2008.

LAW 225 dated 28 October 2008 to approve Government Ordinance 6/2008 to amend and complement Law 457/2004 on advertising tobacco products and sponsorships (Official Gazette 739/2008)

Approved amendments brought additional precisions and clarification, especially regarding locations where tobacco product advertising is allowed.

LAW 260 dated 4 November 2008 on mandatory insurance for housing against earthquakes, landslides or floods (Official Gazette 757/2008)

This Law establishes mandatory insurance for housing owned by individuals or entities and sets the relationship between insured persons and insurers as well as the rights and duties of each Party in a mandatory housing insurance policy.

The mandatory insured amount is the RON equivalent of Euro 20,000 or Euro 10,000 depending of the type of housing. Insurance premium represent the RON equivalent of Euro 20 or Euro 10 depending of the type of housing. The insurance policy is valid for a period of 12 months.

This Law enters in force 120 days after its publication, i.e. 8 February 2009.

LAW 257 dated 31 October 2008 to amend point 1 of article 1 of Government Emergency Ordinance 148/2005 on family support for raising children (Official Gazette 746/2008)

Starting 1st January 2009, persons who have obtained during the year prior to birth of a child, professional revenue subject to income tax for 12 months can benefit from a leave of absence to raise the child up to the age of 2 years (3 years for a disabled child) as well as a monthly allowance in amount of RON 600 or, as an option, an allowance in the amount of 85% of the average income obtained during the previous 12 months.

These provisions apply to the persons who already benefit from allowances. The allowance is paid to either of the child's parents.

We mention that as per Law 7 dated 9 January 2007, the allowance was previously RON 600 irrespective of the level of income prior to the child's birth.

LAW 223 dated 28 October 2008 to sustain education for children under school age (Official Gazette 739/2008)

The law establishes that starting with 2009-2010 school year, commercial companies with headcount of over 200 may organise and operate on their own kindergarten.

Entities which will do so must provide the Education, Research and Youth Ministry a report on the realized investments. Profits invested in the company kindergarten will not be subject to corporate tax.

Implementing regulations will be set by the Government within 30 days.

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REMINDER – ECONOMIC SITUATION AND DOWNSIZING OPERATION

As per Law 467 dated 12 December 2006, companies with over 20 employees must inform and consult employee representatives on the following:

- Recent evolution and future activity as well as the financial position of the enterprise;
- Employment situation within the enterprise, its structure and probable evolution as well as contemplated measures, if any, especially when employment may be threatened;
- Decisions which may lead to significant changes in work organization, contractual relations or labour relations, including those addressed by Romanian legislation with respect to information and consultation in case of collective dismissal and regarding protection of employees' rights in case of the enterprise is purchased by another entity.

The employer is not obliged to provide information or to undertake consultation if this may severely damage the enterprise or its interests. The employer's decision to not provide employee representatives with information or undertake consultation must be justified.

In case of **reduction of activity**, the employee is entitled to receive **75% of his/her gross base salary** for the days he/she did not work for reasons pertaining to his/her employer.

A redundancy procedure can be made in case of suppression of job positions or reorganisation. According to the Labour Code, if the **termination** of the labour contract is for **reasons which are not under the control of the employee**, the employee who will be made redundant will have a **notice period of 20 working days**. The National Labour Agreement for the 2007 – 2010 period sets that in case of labour contract termination for reasons which are not under the control of the employee, the employee made redundant will receive in addition of his/her salary rights **1 additional month of salary**.

Further to dismissal, the employer cannot fill this position for a period of 9 months.

The following is considered collective dismissal as it involves:

- At least 10 employees where headcount is between 20 and 100;
- 10% of headcount where headcount is between 200 and 300;
- 30 employees if headcount is over 300.

The resolution to dismiss must disclose:

- Reasons which led to dismissal;
- Length of the notice period;
- Criteria observed in determining the persons to be dismissed first;
- The list of the vacant positions within the enterprise and a deadline for application if the employee wishes to apply.

The resolution enters in force on the date it is communicated to employees.

In case of collective dismissal, the employer must inform the local Employment Agency.

Employers with a workforce reduction must file a certificate (Resolution 1859 dated 22 December 2005) for the dismissed employee to apply for unemployment allowances.

Unemployment allowances comprise:

- A non-taxable lump sum of 75% of the minimum monthly gross salary (RON 540 – Government Decision 1051 dated 10 September 2008) at the date the allowance is granted;
- And, for the employees who have contributed to unemployment insurance for more than 3 years, an amount computed by multiplying the average monthly gross base salary during the previous 12 months by a percentage which varies as follows, depending on the contribution period:
 - o 3% in case of contributions for at least 3 years;
 - o 5% in case of contributions for at least 5 years;

- o 7% in case of contributions for at least 10 years;
- o 10% in case of contributions for at least 20 years.

Individuals who contributed at least 1 year will receive unemployment allowances for 6 months, those who contributed at least 5 years will receive 9 months of unemployment benefits, and for over 10 years of contributions, 12 months.

GUIDANCE ON PERFORMING INVENTORY OF ASSETS AND LIABILITIES – Norms dated 22 November 2004 (Official Gazette 1174/2004)

Companies must perform a general inventory of assets and liabilities at least once a year, or upon merger or cessation of activity. The annual inventory is usually conducted at the close of the financial year.

The inventory is carried out by an inventory commission consisting of at least 2 persons assigned by a written decision issued by authorised individuals or may have a single person for entities having few employees and an asset value lower than the limit set by the Directors.

The inventory could be performed by the enterprise's own employees or contracted to specialised natural persons or legal entities under service agreements. Stock keepers ("gestionari") and accountants in charge of a warehouse cannot be members of the commission.

In order to have a proper stock counting process, it is advisable to cease all input-output operations of items subject to inventory. If purchase-delivery activities cannot be suspended, a "reserved area" should be created, where all goods received and/or delivered to clients during the stock count process could be stored. All these operations should be supervised by the inventory commission in order to avoid double stock counts or omissions.

Quantities are determined by counting, weighing, measuring or computing volume.

Work in progress, as well as services in progress, should be included in the inventory count.

Separate lists are to be drafted for depreciated goods, useless or deteriorated goods, slow moving products, client orders in progress, suspended orders or abandoned orders.

Goods owned by other entities (rented, leased, in custody, sold on consignment, etc.) are also subject to the stock count and should be mentioned on a separate list which will be submitted to the owner for checking and reconciliation within 5 days of the date the lists are received. No answer means confirmation.

Fixed assets which are partially or totally in operation, without having been formally commissioned as fixed assets, should be included on separate inventory lists. The same procedure is applicable for suspended or abandoned investments.

Valuation patterns and rules should be maintained in order to have comparative accounting information for different periods.

Fixed asset and inventory valuation for the annual inventory is calculated at the actual value of each item, namely, the 'inventory value' determined by item, considering its degree of utility, its condition and market price. If the inventory value is less than the book value, the inventory value is disclosed on the inventory list.

Inventories are to be valued based on the book value less accumulated depreciation. If inventory book value is above the value determined after the inventory process, the inventory value is adjusted by impairment, obtaining the net realisable value.

Tangible and intangible assets observed as depreciated will be valued at the actual value of each item, depending on its utility and on its market price.

Impairments or additional depreciation are recorded irrespective of the enterprise's economic position, even in cases of an accounting loss.

Accounts receivables and payables are subject to checking and

confirmation based on debit and credit account balances which are a significant portion of the total value of these account balances. Their valuation is based on potential value upon collection or payment. If the value determined after inventory is less than the net book value of the receivables, impairment for the difference should be recorded in accounting records. Valuation of liabilities and receivables in foreign currency is obtained using the National Bank of Romania exchange rates communicated for closing the financial year.

The existing petty cash in RON and in foreign currency is subject to a count on the last working day of the financial year and should be compared to the balance in the cash register and to the closing balance in the books.

In case of items counted during the stock count which were not in accounting records, they are valued at real value.

In case of missing items, the directors shall retain them from the "gestionari" salaries at replacement value.

Inventory results should be recorded in accounting records 3 days from the date the inventory report is approved.

The inventory register is a mandatory accounting document where the results of inventory of assets and liabilities are to be written, sorted by nature according to balance sheet captions.

All asset and liability elements written in the inventory register are based on inventory lists, minutes and reports justifying the content of each balance sheet caption.

INFORMATION – PAYMENT OF ITM COMMISSION

Starting November 2008, The Labour Inspectorate ("ITM") will no longer register a Payroll statement if it is not accompanied by a copy of the bank order stamped by the bank to prove that the commission to ITM has been paid.

The deadline for paying the commission (0.25% of gross payroll if labour books are maintained further to ITM approval within the enterprise by a licensed personnel inspector or 0.75% if the labour books are kept and updated by ITM) as well as submitting the payroll statement and related payroll returns is the 25th of the subsequent month.

Associations, foundations and other non-profit organisations can, as per Ordinance 47 dated 28 August 2007, pay payroll and payroll related contributions twice a year as well as withheld income tax starting 1st January 2008. These entities must, however, continue to pay their commission to ITM on a monthly basis.

WINTER CELEBRATIONS

Legal holidays

Legal holidays are:

- Christmas Day and 26 December;
- 1st and 2nd January.

Paid vacation

When legal holidays overlap with paid vacation days, legal holidays will not be considered when computing the number of days of paid vacation.

In case employees work on a legal holiday for professional reasons, the time spent at work will be compensated with time off which will be taken by mutual agreement with the employer (according to Internal Regulations) or "double time" will be paid. During the paid vacation period, the employee will receive an allowance which cannot be less than the monthly base salary and recurring indemnities and bonuses granted for the respective period in accordance with the labour contract.

This allowance is computed as the daily average remuneration computed as above during the three months prior to the month when days off are taken, multiplied by the number of paid holiday days.

Taking days off

Minimum number of days of paid vacation is 21 working days per year.

Employees who joined during the year receive a pro-rated number of paid holiday days, computed from the day they were recruited through 31 December 2008.

The sole case allowed by law when an employer can pay the employee the number of days the employee was entitled to and did not take is cessation of labour contract.

An employee who, under exceptional circumstances, has not taken all the days he/she was entitled to is obliged to take the remaining days before the end of the subsequent year.

The value of unused paid holidays at year-end which the employer records in year-end accounting records with respect to the matching principle is considered as a non-deductible expense by tax authorities.

Gratuities

Gratuities can take several forms:

- Bonuses in addition to December gross salaries are subject to withholding of employee contributions and income tax. For the employer, bonuses and related employer contributions are tax allowed expenses;
- Allowances of RON 150 for each underage child of employees. This allowance may also be given as a "Gift Voucher" and represents an expense that can be included in welfare expenses which are tax deductible up to 2% of annual payroll together with other categories of welfare expenses under the Fiscal Code;
- "Christmas presents," other than those mentioned previously are considered benefits in kind and taxable to the employee. For the employer, these expenses are tax allowed as long as they are taxable to the employee.

INFORMATION – SUSPENSION OF POLLUTION TAX ON NEW VEHICLES

Government has announced the approval of an Emergency Ordinance to suspend pollution tax on new Euro 4 automobiles for a period of 1 year until 31 December 2009.

The tax suspension period starts 1st December 2008 and applies only to vehicles with a capacity of under 2,000 cc³.

The Prime Minister declared that publication of the Emergency Ordinance in the Official Gazette depends on the reaction of the European Commission regarding such a decision.

INFORMATION – AMENDMENTS TO THE FISCAL CODE

According to a statement made by the Prime Minister, the Fiscal Code has been amended by a Government Emergency Ordinance.

Among the amendments that would be brought, we mention:

- Introduction of a 5% VAT rate for the supply of housing for elderly persons, for children and for young disabled persons. This 5% VAT rate would also apply to supply of housing of a built area under 120 sqm with a value of less than RON 380,000 purchased by individuals, either single or married;
- Exemption of any income tax derived from interest on term deposits or saving instruments;
- Exemption of tax on dividends which are reinvested.

The date these amendments enter into force has not been stated but it is likely to be 1st January 2009.

This GEO has not been published in the Official Gazette as of the editor's deadline for this newsletter.

BE AWARE – DECLARATION AND PAYMENT OF TAX ON DIVIDENDS PERTAINING TO 2007

Enterprises which have not declared tax on dividends pertaining to 2007 must do so on the "State consolidated budget liability return" (form 100) for the month of November 2008 and pay by 29 December 2008 (article 114 of Code for fiscal procedures).

BE AWARE: EMPLOYER CONTRIBUTION RATES CHANGE STARTING 1st DECEMBER 2008**H.R. KEY FIGURES**

2008 Contribution	Employer (%)	Employee (%)
Social security contribution	18% for normal working conditions (*) 23% for particular working conditions (*) 28% for special working conditions (*) * New rates apply starting 1 st December 2008	9.5%
Medical leave contribution and health insurance allowance	0.85%	
Work accident and occupational disease fund	0.4% - 2% depending on CAEN code for main activity	
Unemployment fund	0.5% (*) * The new rate applies starting 1 st December 2008	0.5%
Contribution to fund to guarantee payment of salary liabilities	0.25%	
Health insurance fund	5.2% (*) * The new rate applies starting 1 st December 2008	5.5%
Labour office commission	0.25% or 0.75%	
Salary tax		16%
Contributions for non employment of disabled persons (for employers with more than 50 employees)	4 x 50% minimum gross salary (RON 540) for every 100 employees	
Luncheon ticket	8,31 RON	
Minimum monthly gross salary	RON 540 (RON 600 starting 1 st January 2009) RON 1,080 for positions requiring a University degree	
Average monthly gross salary (INSSE November 2008)	1,751 RON	
Per diem (in Romania) Employees in the public sector Employees in the private sector (*2.5)	13.00 RON 32.50 RON	

DECEMBER 2008 – AGENDA**Everyday - do not forget:**

- To complete the petty cash register (or print the electronic version)
- To complete the purchase ledger and sales ledger

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
- To organise a stock count of inventories if the enterprise does not use a perpetual inventory system
- To issue final invoices for the month of December 2008 (but be aware that the deadline of the 15th of the following month applies).

To comply with new 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:**To organize and perform an overall inventory of assets and liabilities****That Wednesday 10 December is the last day to submit:**

- Return on collection of hotel tax

That Wednesday 10 December is the last day to pay:

- Hotel tax
- Advertising services tax

That Monday 15 December is the last day to submit:

- INTRASTAT Statement for November 2008 (submit online)

That Monday 15 December is the last day to pay:

- Tax on independent activities (Instalment IV)
- Tax on rental income
- Tax on agricultural income – on an effective base (Instalment IV)

That Monday 22 December is the last day to pay:

- Tax on Rep. Offices (2nd and last instalment)

That Monday 29 December is the last day to submit:

- State consolidated budget liability return (form 100)*
- Social insurance and special funds liability return (form 102)*
- Excise tax return (form 103)*
- VAT return (form 300)*
- Social security statement with list of insured persons
- Social security statement regarding liabilities to the National Fund for health insurance, medical leave and compensation from health insurance
- List of insured employees and health contribution to social health insurance fund
- Unemployment fund statement with list of insured persons

- | | |
|---|---|
| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Tax return for commission due by employers to the Labour Inspectorate (ITM) <input checked="" type="checkbox"/> Statement of 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) <input checked="" type="checkbox"/> Special VAT return for VAT non payers (form 301)* <input checked="" type="checkbox"/> Environment Fund Statement | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Contribution to fund to guarantee payment of salary liabilities <input checked="" type="checkbox"/> Commission to ITM for holding and updating Labour books <input checked="" type="checkbox"/> Contribution to work accident and occupational disease fund <input checked="" type="checkbox"/> Contribution for non employment of disabled persons <input checked="" type="checkbox"/> Contribution to the Environment Fund <input checked="" type="checkbox"/> Gambling tax. |
|---|---|

That Monday 29 December is the last day to pay:

- Excise taxes
- Tax on crude oil and natural gas from domestic production
- Withholding tax on non-resident income
- VAT
- Salary tax
- Tax on income from independent activities, withheld at source
- Tax on the dividends related to the financial year 2007 which were declared but not paid!**
- 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
- Social security contribution
- Health insurance contribution
- Medical leave contribution and health insurance allowance
- Unemployment contribution

IMPORTANT

All forms mentioned above as well as guidance on their preparation may be downloaded from the Ministry of Economy and Finance website: www.mfinante.ro

The tax returns noted with an asterisk (*) can be submitted by remote means of electronic transmission by taxpayers which have opted to file their returns on-line and which hold a digital certificate issued by ANAF prior to 1st May 2008, or by an accredited supplier of certificates after 1st May 2008.





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