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ORDER 92 dated 8 February 2008 to amend implementation Norms of provisions of Law 19/2000 regarding the public pension regime and other social insurance rights, with its further amendments and complements, approved by Order of Labour and Social Solidarity Minister (Official Gazette 116/2008)

This Order redefines the notion of gross realized income on which the CAS contribution ("Contributia Asigurari Sociale") applies. Thus, all the components known to date enter into the contribution base without a ceiling, and from now on, include all of the following items:

- Amounts granted upon retirement;
- Amounts granted as per law, collective bargaining or individual labour contract in case of termination of the labour relationship, in case of service termination for public servants, in case of termination of an agency contract or a cooperative relation further to an individual or collective dismissal, whatever its denomination, amount and duration for which it is granted;
- Subsidies, assimilated to social welfare, granted by the employer to employees or to other persons due to the occurrence of social or family events, over the ceiling for fiscal deductibility of welfare expenses;
- Compensation for activities carried out in elected functions within non-profit organizations (trade unions, associations, foundations);
- Monetary gifts offered by the employer for the benefit of employees' underage children, for Easter, 1st June, Christmas and similar celebrations for other religions as well as the gifts offered to female employees on 8 March or on any other event;
- Amounts received by representatives in the tripartite entities, at Shareholders General Meetings, at Board of Directors meetings, at Steering committee meetings and by the members of the "cenzori" committee;
- Compensation to attend meetings granted as per law to members of commissions constituted by public authorities and institutions;
- Amounts received by sundry natural persons other than duly licensed persons for carrying out independent activities upon performance of professional activities (such as insurance, marketing, advertising, real estate, etc.);
- Amounts received further to civil contracts or collaboration contracts;
- Any other monetary income which, in accordance with the law, is not exempted from paying social insurance contributions;
- Payment of part of the salary in kind, in the form of advantages granted by the employer in accordance with the Labour Code;
- Use of any item, including use of any type of vehicle, which is an enterprise asset, for personal purposes, except for distances from domicile to the place of work and return;
- Full or partial rental fees and, if applicable, utilities supported by the employer, housing, food, clothing, housemaid as well as all other goods or services free of charge or granted at a price lower than market price;
- Non refundable loans;
- Employee's debts waived by the employer;
- Subscription fees and cost of phone calls, including the cost of telephone cards, for personal purposes;
- Transport tickets on any means of transport, used for personal purposes;
- Insurance premiums paid by the entity for its own employees or other beneficiaries of labour income at the time of payment of premiums other than for mandatory insurance.

DECISION 149 dated 13 February 2008 to amend methodological implementation Norms of Law 76/2002 regarding unemployment insurance regime and enhancing employment, approved by Government Decision 174/2002 (Official Gazette 126/2008)

This Decision sets the monthly base for employee contributions to the Budget for unemployment insurance which will be withheld and paid by the employer.

This base represents the monthly gross income realized by persons who are insured by law on a mandatory basis and includes the following items, if applicable:

- Monthly gross base salary, corresponding to the time effectively worked, added to which

are: management bonuses, incentive salary and other employee rights which, in accordance with norms, collective bargaining or labour contract, are part of the base salary;

- ☑ Remuneration of directors and members of the supervisory board of a public limited company as per the provisions of Law 31/1990 regarding commercial companies, republished, with its further amendments and complements;
- ☑ Bonuses, fringe benefits and monetary rights, granted in accordance with the law or collective bargaining/labour contract in the form of a percentage based on the above mentioned items or a lump sum, irrespective of whether they are permanent or not;
- ☑ Redundancy pay, disability pay for periods of temporary work incapacity supported by the enterprise, in accordance with the law, in case the labour or service relationship is suspended for temporary work incapacity - if it does not exceed 30 days - as well as any other compensation granted to the employee and supported by the enterprise as per law.

The following do not enter into the base for computing employee contributions to unemployment insurance:

- ☑ Allowances supported by the State Social Insurance Budget, including allowances granted in case of work accident and occupational disease;
- ☑ Per diem for travel and being part of a delegation, delegation compensation, secondment and transfer;
- ☑ Author's rights;
- ☑ Participation of the employee in profit;
- ☑ Compensation granted in accordance with the law or collective bargaining/labour contracts to employees who are made redundant for reasons which are not for cause;
- ☑ Gross income realized by persons who are not in circumstances established by article 19 of Law 76/2002 but who receive income due to the fact they were once insured on a mandatory basis as per law.

As for the month in which the labour relationship begins, terminates, is suspended or resumed, except for suspensions for temporary work incapacity for a period which does not exceed 30 days, the employee contribution to unemployment insurance is computed by applying the rate set by law for employee contributions to the base corresponding to the time effectively worked during the month.

ORDER 101 dated 21 January 2008 to approve the model and content of forms used to declare taxes and contributions under self assessment or withholding regime (Official Gazette 70/2008)

This Order approves the model and instructions for use of new forms starting 1st January 2008:

- ☑ 100 " State consolidated budget liability return ", code 14.13.01.99/bs;
- ☑ 101 "Corporate tax return", code 14.13.01.04;
- ☑ 102 "Social insurance and special funds liability return",

code 14.13.01.40;

- ☑ 103 "Excise return", code 14.13.01.03/a;
- ☑ 104 "Return to allocate income and expenses between associates", code 14.13.01.01/dv;
- ☑ 120 "Statement regarding excise", code 14.13.01.03;
- ☑ 130 "Statement regarding tax on crude oil from domestic production", code 14.13.01.05.

ORDER 125 dated 15 January 2008 regarding submission of tax returns encoded with bar codes (Official Gazette 71/2008)

ORDER 64 dated 31 January 2008 to set the indexed value of a luncheon ticket for the first half of 2008 (Official Gazette 93/2008)

For the first half of 2008, starting in March, the value of a luncheon ticket is **RON 7.88**.

ORDER 222 dated 8 February 2008 on the content of the transfer price file (Official Gazette 129/2008)

- ☑ To set transfer prices, taxable entities which carry out transactions with related parties must, upon request of the tax authorities, prepare and present in the time frame set by tax authorities, a transfer price file.
- ☑ The request for the presentation of the transfer price file will be made during a full or partial tax inspection.
- ☑ To set the deadline for preparation and remittance of the transfer price file, tax authorities will take into account the number of related parties involved in the transactions, the number of transactions carried out and their complexity as well as their duration. The deadline for submitting the transfer price file will be at most 3 calendar months with the possibility of one extension upon taxpayer request for a duration equal to the one initially set.
- ☑ Refusal to submit the transfer price file or incomplete presentation at the deadline set by tax authorities is deemed to represent performed transactions with related parties without justification of the used transfer prices and will trigger assessment of the transfer prices by tax authorities.
- ☑ In case the taxpayer is applying anticipated price agreements issued by ANAF, preparation and submission of the transfer price file is not necessary for transactions and periods to which these agreements refer.

The transfer price file will contain:

Information about the Group

- ☑ Group organisation chart, legal and operational structure including ownership interests, historical record and financial information;
- ☑ General description of Group activities, business strategies, including changes in strategy in comparison to the previous financial year;
- ☑ Description and implementation of transfer price methods, if any;

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- General presentation of transactions with related parties within the European Union:
 - transaction mode;
 - invoicing mode;
 - value of transactions.
- General description of functions and risks assumed by related parties, included the changes in this respect in comparison to the prior year;
- Presentation of holders of intangible assets within the Group (patent, name, know-how, etc.) as well as royalties paid or received;
- Presentation of anticipated price agreements concluded by the taxpayer or by other companies within the Group, except for the ones issued by ANAF ("Agentia Nationala de Administratie Fiscala").

Information about the taxpayer

- Detailed presentation of transactions with related parties:
 - transaction mode;
 - invoicing mode;
 - value of transactions.
- Presentation of comparative analysis:
 - features of goods or services;
 - functional analysis (functions, risks, use of non-current assets, etc.);
 - contractual terms;
 - economic surroundings;
 - specific business strategies;
 - information on comparable international or domestic transactions.
- Presentation of related parties and their permanent establishments involved in these transactions or agreements;
- Description of method for computing transfer price and reasoning for selection criteria:
 - in case the traditional methods of determination of transfer price are not used, this option will be justified;
 - in all cases when the method of price comparison is not applied, this option will be justified.
- Description of other circumstances considered relevant by the taxpayer.

DECISION 144 dated 13 February 2008 to approve methodological Norms for computation of contributions to work accident and occupational disease fund (Official Gazette 124/2008)

INSTRUCTION 3 of the National Bank of Romania (NBR) issued on 1st February 2008 regarding reference interest rate for February 2008 (Official Gazette 89/2008)

For February 2008, the NBR set the reference interest rate at 8% per annum.

ORDER 227 dated 24 January 2008 on the inflation index used to index advance payments for annual corporate tax (Official Gazette 87/2008)

For the year 2008, the inflation index used to update advance payments for annual corporate tax is 3.8%. Advance payments for annual 2008 corporate tax are made only by banks, which are Romanian legal entities.

ORDER 254 dated 18 February 2008 to approve the model and content of form 301 "Special VAT return" (Official Gazette 146/2008)

DECISION 150 dated 13 February 2008 to set the number of labour permits which may be issued in 2008 to foreigners (Official Gazette 126/2008)

In accordance with this decision, 10,000 labour permits may be granted in 2008 to foreigners who wish to conclude a labour contract or to work in secondment in Romania for their foreign employer as per the provisions of OUG 56/2007 regarding employment and secondment of foreigners in Romania.

The number of labour permits mentioned above does not apply to agreements, conventions or bilateral understandings concluded between Romania and other countries. Thus, EU citizens do not need a labour permit.

ORDER 112 dated 5 February 2008 to approve the model of special returns set by article 4 of OUG 76/2007 on the special tax registration procedure and payment of social contributions (Official Gazette 115/2008)

In accordance with article 4 of OUG 76/2007, the non-resident taxpayer which employs seasonal workers subject to Romanian legislation regarding social insurance submits to the tax authorities on deadlines set by special provisions the "State consolidated budget liability return" and to the institutions in charge subordinated to CNASS ("Casa Nationala Asigurari Sociale de Sanatate"), the National Labour Agency and to CNAS ("Casa Nationala Asigurari Sociale"), a special return which includes the nominative list of the insured persons

ORDER 19 dated 19 February 2008 to approve Guidance for closing financial year 2007 for companies in the insurance field (Official Gazette 141/2008)

REGULATION 1 dated 23 January 2008 on the transformation of financial institutions into credit institutions (Official Gazette 70/2008)

Financial institutions, Romanian legal entities, regulated or monitored by a supervision authority may be transformed into any type of credit institution set by article 3 of OUG 99/2006 regarding credit institutions with adequate capital, approved with its amendments and complements by Law 227/2007 in compliance with all general and specific applications for license applicable to the respective category of credit institutions set by NBR Regulation 11/2007 on licensing credit institutions, Romanian legal entities and Romanian branches of credit institutions from other countries.

DIVIDENDS

Receiving dividends

Dividends received by a Romanian legal entity are recorded in the beneficiary accounting records as financial income and are not taxable income for determination of corporate tax.

However, this financial income is taken into account upon determination of the tax base if the shareholder which receives the dividends is subject to the micro enterprise regime and is taxed at a rate of 2.5% (applicable in 2008).

Fiscal regime for dividends received from European Union (EU) member States

After Romania joined the EU, the following are no longer taxable:

- dividends received by a Romanian legal entity, which is also the parent company, from a subsidiary located in a member State if the Romanian legal entity fulfils all the following conditions:
 - is liable for corporate tax without possibility of option or exemption;
 - holds at least a 15% ownership interest (10% starting 1st January 2009);
 - has held the ownership interest for 2 consecutive years as of the dividend receipt date.
- dividends received by a Romanian legal entity through its permanent establishment located in a member State are not taxable income if the Romanian legal entity fulfils all the above mentioned conditions.
- dividends received by permanent establishments in Romania of foreign legal entities from other member States, where the parent company located in other member States receives dividends distributed by subsidiaries, if the foreign legal entity fulfils all the following conditions:
 - in accordance with fiscal legislation of the member State, it is considered to be resident in this country and as per dispositions of the treaty to avoid double taxation concluded with a third country, it is not considered to have a fiscal establishment outside the EU;
 - is subject, in accordance with fiscal legislation of a member State, to corporate tax or to a similar tax without the possibility of option or exemption;
 - holds at least 15% of the share capital of the subsidiary located in a member State, 10% starting 1st January 2009;
 - has held the subsidiary for 2 consecutive years as of the date the dividends were recorded by the permanent establishment in Romania.

Dividends received by a Romanian legal entity through its permanent establishment located in a member State are not taxable income if the Romanian legal entity fulfils all the above mentioned conditions.

The above mentioned provisions do not apply to profits distributed to Romanian legal entities, permanent establishment in Romania of foreign legal entities from another member State which result from liquidation of a subsidiary located in a member State.

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Distribution of dividends

Dividends attributed to a shareholder are usually in proportion to the percentage of interest held. However, it could be otherwise if the limited liability company ("SRL") constitutive act expressly states another allocation of the profit.

Romanian legislation does not permit payment of dividends in advance.

The decision to distribute dividends is decided at the Shareholders General Meeting (SGM) where the financial statements of the financial year then ended are examined. It is worth mentioning that profit distributable to shareholders is the profit after allocation to the legal reserve (5% of gross profit until the legal reserve amounts to 20% of share capital) and after covering losses carried forward, if any.

Resolutions of shareholders are drafted in the SGM minutes. An extract of the Minutes disclosing the decision to distribute dividends to shareholders is also usually drafted to avoid to having to providing the bank with the full Minutes.

Effective payment of dividends may be made once or in several disbursements depending on cash position of the company.

Payment of dividends by a Romanian legal entity to a shareholder, non-resident natural person or legal entity:

- Is made in foreign currency and not in local currency at the prevailing exchange rate for the dividend payment (not at the exchange rate as at 31 December or as at SGM date);
- Is made upon presentation of the SGM Minutes or extracts of the Minutes to the bank which the bank annotates with the successive disbursements, if any;
- Some banks request presentation of the tax residence certificate before making dividend payments;
- Implies that the tax on shareholder dividends, if any, is paid in RON to the Romanian State Budget by the 25th of the following month.

Commissions for the Romanian legal entity and for the non-resident shareholder

The bank will charge a commission for purchasing foreign currency if the company does not hold the amount in foreign currency in its bank account. A commission is also charged for the transfer of the tax on dividends to the Romanian State Budget, if applicable. The amount of the commission for the transfer of dividends abroad depends on how the "Dispozitie de Plata Externa" is prepared. If the Romanian legal entity does not specify that it supports all commissions (locally and abroad), the amount of the dividends cashed by the shareholder would be reduced by the amount of the commissions that must be supported abroad.

Tax on dividends

- The tax rate applicable to dividends distributed to **resident natural persons** is **16%** in accordance with article 67 of the Fiscal Code.

- The tax rate applicable to dividends distributed to **resident legal entities** is **10%** in accordance with article 36 of the Fiscal Code.

In accordance with article 36 of the Fiscal Code, tax on dividends paid by a Romanian legal entity to another Romanian legal entity is nil, if the beneficiary of the dividends holds at least a 15% ownership interest (10% starting 2009) in the entity which pays the dividend at the date of payment and has held it for 2 consecutive years as of the dividend payment date. These provisions apply subsequent to the date Romania joined the European Union (EU).

In the Implementation Norms of the Fiscal Code, dividends distributed and paid after 1st January 2007 enter under the incidence of these provisions, even if they come from pre-2007 profits carried forward, as long as the beneficiary meets the requirements.

- The tax rate applicable to dividends distributed to **non-resident natural and legal entities** is 16% unless the **tax rate set by the convention to avoid double taxation signed by Romania and the State of residence** applies. To benefit from provisions of the treaty to avoid double taxation, the shareholder must provide the Romanian legal entity with its tax residence certificate.

Most of the conventions to avoid double taxation set a rate for tax on dividends which is below 16%. Under these circumstances, it is crucial for the shareholder to be in a position to benefit from the dispositions of the treaty to avoid double taxation. The tax residence certificate is obtained from tax authorities of the country of residence. The certificate must mention the period for which it is issued and the country it is directed to.

If the Romanian legal entity does not hold the residence tax certificate at the dividend payment date, tax on dividends at the standard rate of 16% will be withheld from

dividends. An application to recover excess taxes on dividends withheld is possible but laborious. It is therefore of utmost importance for non-resident entities to have provided a valid tax residence certificate at dividend payment date.

In case dividends afferent to 2007 are allocated but not paid before 31 December 2008, the Romanian legal entity must pay tax on dividends by 31 December 2008 at the latest. If applicable, dividends afferent to the year 2007 and not disbursed by the end of 2008 will be disclosed in liabilities as their amount net of tax on dividends.

Other contributions based on dividends

Natural persons who receive dividends must pay a contribution to **health** insurance of **6.5 %** on these dividends to the State health insurance regime if they are insured by other means. This contribution based on the amount of dividends must be withheld by the dividend payer and transferred to the Romanian State Budget on by the 25th of the month following the month of dividend payment at the latest.

Filing obligations

- The Romanian legal entity must disclose on its monthly form 100 "State consolidated budget liability return" the tax on dividends withheld from natural persons and legal entities and to submit it on by the 25th of the month following the month of dividend payment at the latest.
- For the dividends paid to resident natural persons, the Romanian legal entity must submit form 205 "Informative statement on income under the withholding tax regime, per beneficiary of income", code 14.13.01.13/I :
 - This statement is to be filed by the Romanian legal entity which is obliged to compute, withhold and pay tax on dividends;
 - This statement is to be submitted on by 30 June for the dividends paid during the previous fiscal year at the latest.
- For dividends paid to non-resident natural persons and legal entities, the Romanian legal entity must submit the "Informative statement on tax withheld and paid on income under the withholding regime/exempted income, per non-resident income beneficiary" :
 - This statement is to be filed by the Romanian legal entity which is obliged to compute, withhold and pay tax on dividends;
 - This statement is to be submitted by the end of February for the dividends paid during the previous year at the latest.

Regarding other formalities with Romanian tax authorities

Formalities are to be performed to obtain a statement of the amounts which were withheld on dividends paid to non-resident shareholders from the Romanian tax authorities so the shareholders may use the tax credit when paying tax in their country of residence.

Participation of employees in profit

"Participation of employees in profit" does not represent a distribution of company profit to the employees as the employees have no right to profit appropriation but to bonuses subject to the standard taxation regime of revenue assimilated to salaries.

The regulation afferent to "participation of employees in profit" refers to national companies and State owned commercial companies or where the State holds the majority of interest as well as the "regii autonome" but the regulation does not exclude the possibility of other companies from granting bonuses in correla-

tion with performance of the enterprise in making profit.

Irrespective the nature of share capital of commercial companies and in accordance with the provisions of IAS 19 – Employee benefits as well as OMFP 1752/2005, recognition of bonuses representing participation of employees in profit is made by the way of provisions for risks and expenses. In the subsequent year, after approval of the financial statements at the SGM, payroll expenses and related contributions are recorded and therefore this "participation of employees in profit" only affects the accounting profit for the year it relates to, the impact on the accounting profit of the subsequent year being nil.

Provisions for risks and expenses recorded during the year it is intended to grant "bonuses representing participation of employees in profit" are disallowed expenses from tax point of view. Writing off provisions the following year represents non-taxable income. Payroll expenses and related contributions are tax allowed the subsequent year upon approval of the financial statements at the SGM.

MARCH 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 organize a stock count of inventories if the enterprise does not use a perpetual inventory system
- to issue final invoices for the month of March 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:

That Monday 10 March is the last day to submit:

- Return on collection of hotel tax

That Monday 10 March is the last day to pay:

- Hotel tax
- Advertising services tax

That Monday 17 March is the last day to submit:

- Annual income return for the associations formed between natural persons which do not represent legal entities (form 204);
- INTRASTAT statement for February 2008.

That Monday 17 March is the last day to pay:

- Tax on independent activities (1st instalment)
- Tax on rental revenues (1st instalment)

H.R. KEY FIGURES

2008 Contribution	Employer (%)	Employee (%)
Social security contribution (*)	19.50% for normal working conditions (**) 24.50% for particular working conditions (**) 29.50% for special working conditions (**)	9.5%
* NOTE: The basis for the employer and employee contribution to social insurance is no longer subject to a ceiling. ** NOTE: Starting 1 st December 2008, employer contributions to social insurance decrease to: 18% for normal working conditions 23% for particular working conditions 8% for special working conditions		
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	1%	0.5% (**)
** NOTE: Employee unemployment contributions are calculated by applying 0.5% to total gross income		
Contribution to fund to guarantee payment of salary liabilities	0.25%	
Health insurance fund	5.5% (*)	6.5% (**)
* NOTE: Starting 1 st December 2008, employer contributions to health insurance will be 5.2%. ** NOTE: Starting 1 st July 2008, employee contributions to health insurance will be 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 500) for every 100 employees	
Luncheon ticket	7.88 RON starting 1st March 2008 (previously RON 7.56)	
Minimum monthly gross salary	RON 500 RON 1,000 for positions requiring a University degree	
Average monthly gross salary (INSSE December 2007)	1,730 RON	
Per diem (in Romania)		
Employees in the public sector	13.00 RON	
Employees in the private sector (*2.5)	32.50 RON	

- Tax on billboards (1st instalment)
- That Tuesday 25 March is the last day to submit:**
- State consolidated budget liability return (form 100)
- VAT return (form 300)
- Social security statement with list of insured persons
- Social security statement regarding liabilities to the National Fund for health insurance and for 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
- Tax return for commission due by employers to the Labour Inspectorate (ITM)
- Special VAT return for VAT non payers (form 301)
- 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)
- Environment Fund Statement
- That Tuesday 25 March 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 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
- Contribution to fund to guarantee payment of salary liabilities
- Commission to ITM for holding and updating Labour books
- Contribution to work accident and occupational disease fund
- Contributions for non employment of disabled persons
- Contributions to the Environment fund
- Gambling tax.
- That Monday 31 March is the last day to submit:**
- Statement under own responsibility of companies and operators in the field of road transport (as defined by OUG 109/2005) to determine the tax due for 2008. Thus, for each means of transport of goods or combination of vehicles with a total authorised weight of or over 12 tons, whether the vehicle has made or will make at least one operation of international road transport during the year must be declared.
- That Monday 31 March is the last day to pay:**
- Local tax on land, buildings and means of transport (1st instalment). The second and final instalment will be due on 30 September 2008.

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



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- Training**



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