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ORDER 1607 dated 26 October 2009 to amend and complement Order 101/2008 of ANAF President to approve the model and content of forms to declare taxes and contributions under self assessment or withholding regime (Official Gazette 757/2009)

The Order approves the template for 2009 corporate tax returns (form 101) to be submitted in 2010. From the return template and guidelines to complete the final tax return for 2009, clarification is provided regarding the modality to adjust tax on profit and the minimum tax paid during 2009.

Although it was presumed that the final calculation of minimum tax will be made for the full year in comparison with the tax on profit for the full year, in fact, the adjustment at year-end is as follows:

- Minimum tax is assessed per quarter. For the quarters when tax on profit is lower than minimum tax or no tax on profit is due, the minimum tax is due, in addition to the tax on profit determined for the full year;
- Tax on profit is determined for the full year.

In conclusion, an entity is liable for tax on profit but for the quarters when minimum tax is due, minimum tax is not deducted from the annual tax on profit but remains a tax burden for the taxable entity

LAW 329 dated 5 November 2009 regarding reorganising public authorities and institutions, rationing limited public funds, supporting business community and respecting frame agreements with European Commission and International Monetary Fund (Official Gazette 761/2009)

The "Measures to support business community in the scope of overcoming financial difficulties and reviving trade" section of this Law introduces a new article 19² in the Fiscal Code denominated "**Exemption of tax on profit for reinvested profit**" which is **applicable until 31 December 2010**.

Among the major measures, we mention:

- Reinvested profit represents cumulative accounting profit from the start of the year which is used for investments during the year;
- Tax on profit exemption is granted for investments in the production and/or acquisition of specific technical equipment and is capped at the amount of tax on profit which is due for the year;
- Exemption is calculated per quarter or per year;
- Only new assets qualify for exemption;
- Qualifying assets must be kept by the enterprise for a duration at least half of their normal useful life. If not, tax on profit will be reassessed and penalties for late payment will apply.

Besides, Law 329 introduces amendments and complements to OUG 50/2008 which established pollution tax on vehicles.

LAW 363 dated 20 November 2009 to approve OUG 92/2009 to postpone payment of fiscal liabilities which were not settled at due date as a consequence of the economic and financial crisis (Official Gazette 800/2009)

Law 363 introduces some amendments to the Emergency Government Ordinance 92/2009:

- The condition to have no arrears in fiscal liabilities as at 30 September 2008 has been cancelled.

To qualify, the other conditions the taxpayer must meet at the date of application remain unchanged:

- All tax returns submitted;
- No inscription in fiscal record;
- Not considered liable as per provisions of Law 85/2006 regarding the insolvency procedure with its subsequent amendments and complements and/or jointly liable as per provisions of articles 27 and 28 of OG 92/2003 – Fiscal Code procedure.

Guarantees which are set up and/or the assets which are proposed as security must represent:

- 20% of fiscal liabilities for which settlement is postponed as well as penalties for late payment for postponement period of up to 3 months;
- 40% of fiscal liabilities for which settlement is postponed as well as penalties for late payment for postponement period of 3 months or more.

Postponement resolution becomes null and void if the taxpayer has not paid fiscal liabilities within 30 days of due date as per postponement resolution, or 20 December of the current fiscal year.

By exception to the provisions of OG 92/2003, republished with its subsequent amendments and complements, the taxpayer is liable for **penalties for late payment at the rate of 0.05% per day** for the postponement period starting the date of issue of the postponement resolution and until:

- the termination date of postponement period granted; or, if applicable,
- the date postponement ceases to be valid.

If the taxpayer does not settle its tax liabilities by the date due as per the postponement resolution, penalties for late payment are due for the entire duration of postponement at the rate of 0.1% per day which is the standard rate as per OG 92/2003.

Application for postponement fiscal liability payments can be submitted until 30 June 2010.

ORDER 3055 dated 29 October 2009 to approve Accounting Regulations in conformity with European Directives (Official Gazette 766/2009)

Order 3055 enters in force on 1st January 2010 and abrogates the former regulations set by OMFP 1752/2005 amended by OMFP 2374/2007.

This Order together with regulations set by Accountancy Law 82/1991 republished constitutes the main legal framework for accounting regulations in Romania.

We mention the main new provisions and amendments introduced by the Order:

SUNDRY AMENDMENTS/ ADDITIONAL CLARIFICATION

- Criteria and conditions when simplified or comprehensive annual financial statements are prepared and maintained, as well as conditions when financial statements must be audited;
- Payable and receivable triggered by contractual penalties, damages and other similar items are recorded separately in the supplier and client accounts;
- Recording exchanges of assets;
- Disclosure of items which influence the acquisition cost;
- Treatment of the items related to borrowing cost;
- Evaluations performed at year end;
- Factors which are indications for impairment of tangible and intangible assets;
- Recognition criteria for exploration expenses and evaluation of mineral resources as fixed assets;
- Separately recording tangible assets and inventories which were purchased, for which related risks and benefits have been transferred but are under procurement;
- Conditions for reviewing the useful life of fixed assets;
- Financial instruments;
- Modification of use of held assets;
- Recognition:
 - o Bonuses representing participation in profit granted as per law;
 - o Benefits granted to employees in the form of company shares or other own equity instruments;
 - o Contributions of the enterprise to a voluntary pension scheme or to voluntary health insurance premiums;
 - o Advance payments of corporate tax determined as per law;
- Update of provisions;
- Application of financial concept of capital while preparing financial statements;
- Accounting treatment for:
 - o Items having the nature of public patrimony, received for administration, disposed of;

- o Programmes for regular clients;
- o Expenses incurred for utilities installations;
- Internal control.

CONSOLIDATION

The Order includes further clarification regarding consolidation:

- Evaluation of control;
- Recognition of badwill;
- Treatment applicable to losses of an investment in an associated enterprise.

COMMERCIAL DISCOUNTS

Record keeping for commercial discounts received or granted after initial invoice has changed. Thus, account 609 "Received commercial discounts" and account 709 "Granted commercial discounts" have been introduced. Use of these accounts is unusual for the 6 or 7 account series as account 609 is credited when commercial discounts are received and account 709 debited when commercial discounts are granted. This operating modality will affect movements ("*rulajele*") in the trial balance. Subsequently, account 401 "Supplier" will be debited and account 411 "Client" will be credited.

EVALUATION OF FOREIGN CURRENCY MONETARY ITEMS

- Evaluation of monetary items in foreign currency is to be made monthly and the exchange gains (losses) are to be recorded in accounting records using the exchange rate published by the National Bank of Romania on the last banking day of the month. The same will apply to receivable and payable denominated in RON but for which collection or disbursement is made in RON in accordance with a foreign exchange rate;**
- Disbursements in foreign currency further to advance payments, i.e. related expenses are recognized in the books at the exchange rate in force when the expenses occurred or at the exchange rate when the business claim to justify the advance payment is prepared;
- In case of items received for which the invoice has not been received, the exchange rate used to recording the transaction will be the one in force at the date the items are received;
- Recording share capital subscribed in foreign currency in RON is based on the NBR exchange rate in force at the subscription date.

CONTINGENT ASSETS AND LIABILITIES

Contingent assets (accountant 807 "Contingent assets") and contingent liabilities (account 808 "Contingent liabilities") are off -balance sheet items.

PROFIT/LOSS CARRIED FORWARD

- Corrections to profit (loss) carried forward are only made for significant errors in respect of previous financial periods.
- Account 117 "Profit (loss) carried forward" will have 2 subaccounts: opening balance which represents profit or loss of previous year and if case, correction of accounting errors.

INCOME

- When, as per express legal provisions, amounts representing taxes are recorded in income and simultaneously are expensed, upon preparation of the income statement, it is the net turnover which is disclosed, representing net income after deduction of the expenses representing these taxes.
- Amounts collected by an enterprise on behalf of a third party, including cases of agent, commission or commercial agent contracts concluded as per law, do not represent operating income even if from a VAT point of view, the entity is considered a purchaser for resale. In this case, income from current activity is from commissions the enterprise is entitled to.

NEW ACCOUNTS

- 1067 Reserve for exchange rate differences related to a net investment in a foreign entity
- 223 Technical installations, means of transport, animals and plantations under procurement
- 224 Furniture, office equipment, human resources protection equipment and other tangible assets under procurement
- 321 Raw materials under procurement
- 322 Consumables under procurement
- 323 Materials having the nature of low value inventories under procurement
- 326 Animals under procurement
- 327 Merchandise under procurement
- 328 Packaging under procurement
- 475 Investment subsidies
- 4751 Government investment subsidies – *change in account number*
- 4752 Non-refundable loans with the feature of investment subsidies – *change in account number*
- 4753 Donations for investment – *change in account number*
- 4754 Surplus of inventory with the nature of fixed asset – *change in account number*
- 4758 Other amounts received with the feature of investment subsidies – *change in account number*
- 609 Received commercial discounts
- 643 Bonuses representing employee participation in profit
- 644 Expenses related to the remuneration with own capital instruments
- 6456 Enterprise contribution to facultative pension scheme
- 6457 Enterprise contribution for voluntary health insurance premium
- 652 Environment protection expenses
- 709 Granted commercial reductions
- 712 Cost of services in progress
- 8038 Public assets received in administration, concession or by renting
- 806 Certificates for the emission of emission of gas with green house effect
- 807 Contingent assets
- 808 Contingent liabilities

ACCOUNTS FOR WHICH THE NAME HAS CHANGED

- 704 Rendered services
- 711 Cost of the goods in inventories
- 7582 Received donations

ORDER 648 dated 29 October 2009 to amend and complement the Chart of Accounts and guidelines to reflect non-refundable funds aimed to finance the community agricultural policy granted by the European Community in financial records as well as co-financing and pre-financing funds, approved by Order 498/2008 of the Ministry of Agriculture and Rural Development (Official Gazette 754/2009)

INSTRUCTION 40 dated 2 November 2009 regarding the National Bank of Romania (NBR) reference interest rate for November 2009 (Official Gazette 742/2009)

For the month of November 2009, the NBR reference interest rate is 8% per annum.

ORDER 570 dated 23 October 2009 to approve Implementation Norms of Law 289/2004 regarding the legal status of loan contracts for consumption involving individuals (Official Gazette 750/2009)

ORDER 1918 dated 26 October 2009 to amend Order 175/2005 of the Ministry of Economy and Trade regarding procedure for economic operations carrying out industrial activity to report data in respect of environment protection (Official Gazette 750/2009)

INFORMATION – INTRASTAT STATEMENT OF ITEMS UNDER FINANCIAL LEASE CONTRACTS

In the INTRASTAT statement regarding items under financial lease contracts, **the full value** of the item (total of all instalments including residual value) is to be declared when the item is introduced in Romania as per the **Manual for the providers of statistical information – part II – a – "1.3.5 Financial Leases."**

Under these circumstances, there is a difference between the amount reported in tax returns (VAT return and recapitulative statement) and the value declared for INTRASTAT statistics, although the difference in treatment of financial leases for INTRASTAT and tax authorities can be justified.

Source: National Institute for Statistics

REMINDER – RECONSTITUTION OF DOCUMENTS

As per Order 3512/2008 regarding financial and accounting documents, in case of loss, subtraction or destruction of the original example of an invoice, the entity which issued the invoice must issue a duplicate of the lost, subtracted or destroyed invoice. The duplicate can be:

- a new invoice which includes the same data as the original invoice upon which the fact that it is a duplicate which replaces the initial invoice is mentioned; or
- a photocopy of the initial invoice bearing the stamp of the company and upon which the fact that it is a duplicate which replaces the initial invoice is noted.

Non-compliance with one of the above mentioned procedures (for example, a simple photocopy with the mere mention "copy from original") triggers the risk that tax authorities may consider that VAT and associated expense subject to VAT cannot be deducted.

Therefore, BE AWARE that the photocopy provided is stamped and states: **"DUPLICATE, replaces initial invoice."**

REMINDER – CORRECTION OF DOCUMENTS

Practice disclosing many cases where correction of documents is made by handwritten annotations (for instance by writing on a document issued by IT in pen), drawing attention to provisions of article 159 of the Fiscal Code regarding correction of documents is worthwhile.

Correction of information mentioned on an invoice or any other document considered an invoice is made as follows:

- in case the document has not been transmitted, the document is cancelled and a new document is issued;
- in case the document has been transmitted:
 - o either a new document is issued and consists of both information on the initial document, the number and the date of the document subject to correction, the amounts preceded by a minus sign and the correct information and amounts;
 - o or, a new document is issued comprising of correct information and amounts and simultaneously a document is issued with the amounts preceded of a minus sign mentioning the number and the date of the document subject to correction.

In circumstances as per article 138 of the Fiscal Code (rectification of operations, differences in price, commercial discounts, refusals, etc.), the supplier or the service provider must issue an invoice or other document with the amounts preceded by a minus sign when the tax base is reduced or without the minus sign when the tax base increases and transmit the document to the beneficiary except when article 138 letter d) applies (beneficiary is bankrupt).

Non-compliance with one of the above mentioned procedures triggers the risk that tax authorities may consider that VAT and associated expense subject to VAT cannot be deducted.

H.R. KEY FIGURES

2009 Contribution	Employer (%)	Employee (%)
Social security contribution	20.8% for normal working conditions 25.8% for particular working conditions 30.8% for special working conditions	10.5%
Medical leave contribution and health insurance allowance	0.85%	
Work accident and occupational disease fund	0.15% - 0.85% depending on CAEN code for main activity	
Unemployment fund	0.5%	0.5%
Contribution to fund to guarantee payment of salary liabilities	0.25%	
Health insurance fund	5.2%	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 600) for every 100 employees	
Minimum monthly gross salary	RON 600 for unqualified positions RON 720 for positions requiring High School RON 1,200 for positions requiring a University degree	
Luncheon voucher	RON 8.72	
Average monthly gross salary (INSSE September 2009)	1,860 RON	
Per diem (in Romania)		
Employees in the public sector	13.00 RON	
Employees in the private sector (x 2.5)	32.50 RON	

REMINDER – REVALUATION OF LAND AND CONSTRUCTION

The accounting law does not oblige enterprises to revalue land and buildings every 3 years. From an accounting point of view, the IAS16 rules apply and there is no provision regarding frequency of revaluation except for indications of changes in fair value.

Revaluation every 3 years is based on the following:

Resources of local communities are the employee income tax which is withheld by the employer and transferred to the local budget, tax on land (computed as an amount per square meter per category of land) and tax on buildings. This latter tax is a percentage of gross value (not on net value) set by local authorities. This percentage is increased if the gross value has remained unchanged for 3 years; in other words, has not been re-valued, leading to this concept that a revaluation is to be performed every 3 years. The revaluation must be performed by an appraiser who is a member of ANEVAR (Romanian association of valuers) and must be recorded in the books as at 31 December prior to preparation of annual financial statements. Revaluation is recorded according to one of the following 2 methods:

- Gross method (for increases in value: Debit "Building" account and Credit account 105 "Revaluation difference" for revaluation of gross value, and simultaneously, depreciation of revaluation difference: Debit account 105 "Revaluation difference" and Credit "Accumulated depreciation").
- Net method (for increases in value: write off accumulated depreciation first and then Debit "Building" account and Credit account 105 "Revaluation difference" for the change in net value).

Upon the second revaluation, if a loss in value is found, account 105 is reduced first and, if the reduction in fair value is such that account 105 is zero, the additional loss is recognised in the income statement.

Upon the third revaluation, if the fair value has increased, the loss recognised in the income statement at the time of the second revaluation must first be cancelled and the surplus recorded in account 105.

It is emphasized that account 105 cannot be used for increasing the value of share capital.

Under these circumstances, local tax authorities should be contacted for the increased tax rates in force, by location. Tax rates

and the increased tax rates for buildings are established at the discretion of each community. A community with a large number of enterprises and considered prosperous should not have a very aggressive policy regarding the level of local taxes, as it collects income tax for all employees who work in the area. A cost-benefit analysis of appraisal fees compared to the effect of increased taxes should also be taken into account.

WINTER CELEBRATIONS**Legal holidays**

Legal holidays are:

- 1st December (National Day);
- 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 2009.

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 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 – NEW IBAN FOR SETTLEMENT OF THE COMMISSION TO LABOUR INSPECTORATE (ITM)

Be aware that starting 18 November 2009, the bank details for all Labour Inspectorates (ITM) where the commission for holding and updating Labour books is deposited have changed. The new IBAN are disclosed on www.inspectmun.ro. For Bucharest use the following IBAN RO92TREZ7045032XXX008162 at the Treasury District 4.

DECEMBER 2009 – AGENDA

Every day - do not forget:

- To complete the petty cash register (or print 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 2009

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 Tuesday 8 December is last day to submit

- Form 092 (amendments) to change VAT return periods from Quarterly to Monthly for EU acquisitions in November 2009. The October-November period will represent a distinct tax period for which a tax return will be submitted at the latest on 28 December 2009.

That Thursday 10 December is the last day to submit

- Return for collection of hotel tax

That Thursday 10 December is the last day to pay

- Hotel tax
- Advertising service tax

That Tuesday 15 December is the last day to submit

- INTRASTAT statement for November 2009 (submitted on-line)

That Monday 21 December is the last day to pay:

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

That Monday 28 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
- Tax return for commission due by employers to the Labour Inspectorate (ITM)
- 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)
- Special VAT return for VAT non payers (form 301)*
- Environment Fund Statement.

That Monday 28 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 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
- Contribution for non employment of disabled persons for employers with headcount over 50
- Contribution to the Environment Fund
- Gambling tax.

That Thursday 31 December is the last day to pay

- Tax on the dividends related to the financial year 2008 which were declared but not paid!

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.



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ACCOUNTING AND PAYROLL
EXPERT TEAM

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 »**
- Start up services**
- Organization of the accounting function**
- Assistance in implementation of ERP**
- Training**



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