

56 Boulevard Dacia,
District 2, Bucharest
Tel: +40 (0) 31-809 2739
Fax: +40 (0) 31-805 7739
Email: office@apex-team.ro

Contents:

- Significant Fiscal Code amendments
- Minimum annual tax introduced, starting with quarter II 2009 tax
- Deductible operating expenses for a single vehicle
- No VAT recovery upon purchase of a company car and petrol
- Petrol for company car no longer tax allowed
- Missing or inaccurate recapitulative statements on EU acquisitions/supplies of goods: fine of 2% of the goods value
- Year IV and Year V refund of employer social contributions after hiring graduates and continuing service for 3 years
- NBR Interest rate – April 2009
- Cigarette excise taxes
- Non banking financial institutions
- Reminder – Adjustment to taxable profit in case of accounting error correction
- Key HR figures
- MAY 2009 Agenda

EMERGENCY ORDINANCE 34 dated 11 April 2009 to amend 2009 Budget and establish financial and fiscal measures (Official Gazette 249/2009) followed by an AMENDMENT dated 16 April 2009 (Official Gazette 254/2009)

This Emergency Ordinance brings significant amendments to the Fiscal Code and to the Code for Fiscal Procedure which enters into force 1st May 2009.

FISCAL CODE

Corporate tax (Title II) / Tax on micro enterprise revenue (Title IV)

The concept of minimum tax is introduced (new article 18 of the Fiscal Code) which represents a lump sum tax owed by corporate taxpayers, Legal Romanian and foreign entities which carry out their operations in Romania through a permanent establishment as well as an enterprise subject to tax on revenue of the micro enterprise.

The minimum tax is due in case corporate tax or tax on micro enterprise revenue is lower than the minimum tax. The amount of the minimum tax depends on the previous year income through 31 December as per the following schedule:

Total of annual income (RON)	Annual minimum tax (RON)
0 – 52,000	2,200
52,001 – 215,000	4,300
215,001 – 430,000	6,500
430,001 – 4,300,000	8,600
4,300,001 – 21,500,000	11,000
21,500,001 – 129,000,000	22,000
Over 129,000,001	43,000

To determine the income bracket and resulting tax, the following revenue must be deducted from total income registered as at 31 December of the previous year:

- Variation of production stored;
- Production of fixed assets (tangible and intangible);
- Part of government subsidies and other resources for financing investments which were recognized in operating revenue;
- Written off provisions which were disallowed as a tax deduction in accordance with the law;
- Revenue from cancellation of liabilities and penalties due to the State Budget which were not tax deductible as per legal provisions;
- Revenue which represent compensation received from insurance companies;
- Non taxable revenue as expressly set in agreements and memorandum approved by law.

Limitation to expense deductions

- Operating expenses (except petrol), maintenance and repair expenses for automobiles used by persons with management and administration functions at a legal entity are deductible for a single vehicle per person with such attributions;
- Regarding petrol expenses, they are not tax deductible with some exceptions as presented below.

Tax disallowed expenses

From 1st May 2009 to 31 December 2010, **petrol expenses** are not tax deductible for motor vehicles intended for road transport of persons with a licensed weight up to 3.5 tons and up to 9 seats including the driver's seat which belong to or are used by the taxpayer with the following exceptions:

- vehicles used exclusively for intervention, repair, guard service and protection, mail, transport of staff to and from the workplace, specially designed cars for news reports; vehicles used by sales or recruiting agents;
- vehicles used for transport of persons for a fee, including taxis;
- vehicles intended for rental to other persons, driving lessons included.

Fixed asset revaluation reserves

Reserves for the revaluation of fixed assets and land which occurred after 1st January 2004 which are deducted as tax depreciation expense or net book value of the assets disposed of or

written off are taxable at the same time as the tax depreciation deduction on the fixed asset revalued cost or when the fixed asset is disposed of or written off.

Other provisions regarding corporate tax and tax on micro enterprise revenue

- Commercial companies, except banks, will determine the tax to be paid for Quarter II by comparing the corporate tax and the annual minimum tax pro-rated for the 1st May to 30 June 2009 period.
- For Quarter III and Quarter IV, the tax to be paid will be determined by a comparison between the corporate tax and dividing the annual minimum tax by 12 and multiplying by the number of months taken into account in the respective quarter.
- These provisions also apply to micro enterprises but the comparison is made between tax on micro enterprise revenue and the minimum annual tax.
- Taxpayers who benefited from corporate tax exemptions last year and no longer benefit from it will determine the advance payments tax on the basis of previous year corporate tax excluding the exemption.
- Banks and Romanian branches of foreign banks which are newly set up will pay advance tax payments deemed to be RON 2,200, reassessed for the respective taxable period.
- In cases where bank posted a tax loss last year, advance tax payments are deemed to be 25% of the minimum annual tax.

Income tax (Title III)

From 1st May 2009 to 31 December 2010, petrol expenses for vehicles intended for road transport of persons with a licensed weight up to 3.5 tons and up to 9 seats including the driver's seat which belong to or are used by the taxpayer are disallowed expenses while computing the net annual income derived from independent activities. This does not apply to the same categories of vehicles as those mentioned above.

TVA (Title VI)

Special deduction limitations for 1st May 2009 – 31 December 2010 period

For the vehicles intended for road transport of persons with a licensed weight up to 3.5 tons and up to 9 seats including the driver's seat, **VAT is not deductible upon purchase of such vehicles and on purchase of petrol** to run the vehicles with the same features which belong to or are used by the taxpayer, except for the following:

- vehicles used exclusively for intervention, repair, guard service and protection, mail, transport of staff to and from the workplace, specially designed cars for news reports; vehicles used by sales or recruiting agents;
- vehicles used for the transport of persons for a fee, including taxis;
- vehicles used for rendering services for a fee, including rentals to other persons, driving schools, transmission of use through a financial or operational lease;
- vehicles used for commercial purposes, meaning for the resale of goods.

A purchase of vehicle means the purchase of a vehicle in Romania, an import or an EU acquisition of a vehicle. These provisions do not apply to advance payments disbursed prior to 1st May 2009 for the full or partial value of vehicle if its delivery occurs after 1st May 2009.

For vehicles which are not under the present limitations, general provisions regarding deduction apply as per articles 145 and 146-147/1 of the Fiscal Code.

Fiscal period

For taxable entities which use the quarter as the fiscal period under the scope of and made an EU acquisition which is taxable in Romania, the fiscal period becomes the month starting the:

- first month of the quarter if the exigibility of the VAT afferent to the acquisition occurs during the first month of the quarter;
- third month of the quarter if the exigibility of the VAT afferent to the acquisition occurs during the second month of the quarter. The first 2 months of the respective quarter will represent a fiscal period for which the taxable person will submit a VAT return in accordance with article 156/2 point 1;
- first month of the following quarter if the demand date for VAT afferent to the acquisition occurs during the third month of the quarter.

Taxable entities which must change its fiscal period will submit an application for this change (form 010) to tax authorities within 5 working days after the end of the month when the EU acquisition which generated the obligation occurred, and are not allowed to return to a quarterly fiscal period in the future.

Excise and other special taxes (Title VII)

Economic operators intending to market wholesale fuel (petrol, fuel, gas, etc.) must register with tax authorities. The registration procedure and conditions for carrying out these activities are set by ANAF Order. Breach of registration or operation procedures are penalized with a fine and confiscation of amounts resulting from sales.

Economic operators in the wholesale fuel business must comply with the procedure which will be set by Order within 90 days from the date it will be published in the Office Gazette. Breach of this the procedure is penalized with a fine, the confiscation of amounts resulting from sales and discontinuing the right to sell excisable products for 1 to 3 months.

These provisions do not apply to licensed warehouses and to licensed operators for products in the field of energy.

CODE OF FISCAL PROCEDURE

Failure to submit the recapitulative Statement of EU acquisitions/supplies of goods on time (form 390) as per title VI (VAT) of the Fiscal Code or submission of statements with inaccurate or incomplete amounts is penalized with a **fine of 2% the total value of the EU acquisition/supplies of goods which were not declared** or, if applicable, 2% of the difference between the value of the goods and the value which had been inaccurately or incomprehensively declared.

The fine is reduced by 50% if the taxpayer adjusts the recapitulative statement before the deadline for submission of the next recapitulative statement.

A taxable entity is not punished when:

- the recapitulative statement is adjusted before the submission deadline;
- the adjustment occurs after the deadline but was caused by a fact the person is not liable for;
- Until 30 May 2009, adjustments are made to the recapitulative statements with deadlines prior to 1st May 2009.

SOCIAL FUND

A social fund is raised from sponsorships which will be granted by domestic producers and distributors of natural gas on a voluntary basis. Funds will result in general from increased natural gas prices. This fund is raised and distributed in 2009 by granting social aid to individuals facing economic difficulties. Contributions to this fund will not follow the general fiscal treatment for sponsorships (non-deductibility of the expense and tax credit subject to limits set by law) but represent expenses with a limitation of deductibility although the ceiling has not been set.

ORDER 342 dated 14 April 2009 to approve the Procedures to implement provisions of article 841, Law 76/2002 regarding unemployment insurance and employment incentives (MO 266/2009)

This procedure regulates the modalities to grant financial aid set per article 841 of Law 76/2002 regarding the unemployment insurance regime and for incentives for employers which hire graduates from educational institutions in the conditions of article 80 of the Law, after having fulfilled obligations set per article 83 point 1 of the Law, keep a labour relationship with the graduated persons for a period of 1 or 2 years.

Financial aid is granted to employers each year they pursue continued employment of eligible persons but no more than 2 years, to be claimed after fulfilment of the obligation to maintain employment for at least 3 years.

This assistance is equal to the amount of contributions the employer is subject to for these persons and which were paid as per law. Employer social contributions are defined as the social security contribution (pension), contribution to work accident and occupational disease fund, health insurance contribution and unemployment contribution.

To benefit from financial aid, the employer will submit the following documentation with the territorial Labour agency within 60 days of the end of year IV or V of continuous employment of eligible persons. (That is, 1 or 2 years after 3 years the labour relationship has been maintained with the graduates hired under the provisions of the law and for whom the financial aid is applied.)

- Application for the grant of financial aid which will be accompanied by a statement under own responsibility as per template in Appendix 1 of the Order;
- Nominal statement of persons hired among graduates from educational institutions and with whom the labour relationship have been maintained for a period of 1 or 2 years and for whom the financial aid is applied for as per template in Appendix 2 of the Order;
- Labour book copies or other documents set by law which certifies the maintenance of employment for the duration set to qualify for financial aid;
- Tax certificate issued by tax authorities which certifies that, as of the application date, the employer has no outstanding debts regarding social contributions set by law;
- Statement regarding the amount that is to be refunded which represents the amount of the requested financial aid, split by category of social contributions and by graduate as per template in Appendix 3 of the Order;
- Copies of payment statements certified by the employer, where the rights of graduates hired under provisions of article 80 of the Law and with whom the labour relationship has been maintained after fulfilment of obligations set by article 83 point 1 of the Law for a period of 1 or 2 years, are disclosed as well as the employer social contributions for these graduates and their signature.

If applicable, expiry of the period of 1 or 2 years during which the employer has maintained the labour relationship with graduates hired under the provisions of article 80 of Law is prior to the date the Ministry of Labour, Family and Social Protection Order to approve the present Procedures enter into force, applications for financial aid within 60 days are allowed, calculated starting the date the Ministry of Labour, Family and Social Protection Order to approve the present Procedures enters into force.

ORDER 491 dated 6 April 2009 to amend methodological Norms to establish supporting documents to acquire the quality of an insured person without contribution payment as well as to apply foreclosure measures to collect

amounts due to the unique national Fund for health insurance, approved by Order of the National Health Insurance House President 617/2007 (Official Gazette 269/2009)

This Order introduces new codes to declare monthly insured persons to the national Fund for health insurance.

EMERGENCY ORDINANCE 38 dated 22 April 2009 to amend article 39 point 2 and 3 of OUG 44/2008 regarding licensed individuals, individual and family enterprises carrying out economic activity (Official Gazette 269/2009)

As per OUG 44/2008, a natural person can carry out economic activities under one of the following categories:

- Individually and independently as a licensed natural person ("PFA");
- As entrepreneur running an individual enterprise;
- As member of a family enterprise.

In accordance with article 39 point 2 – 5 of OUG 44/2008, natural persons and family enterprises licensed and registered with the Trade Register on the basis of texts of law issued before OUG 44/2008 can continue to operate on the basis of the registration certificate issued by the Court attached to the Trade Register for 1 year from the date the present Emergency Ordinance enters into force, i.e. 25 April 2009. During this lapse of time, the options regarding operating status mentioned above must be exercised. Conversely, affected persons must cease activity or will be erased from the Trade Register "in officio" without any other formality.

We remind that any natural person, Romanian citizen or citizen of another EU Member State or EEA can carry out economic activities in Romania under the provisions of law.

DECISION 61 dated 9 April 2009 to approve implementation Procedures for Programme to enhance development of Small and Medium Sized Enterprises (SME) subject to the limit of reinvested gross profit (Official Gazette 268/2009)

Implementation procedures for the Programme to enhance development of SME within limits of the investments financed by own funds (reinvested gross profit) are approved. The approved procedure will be published in the Official Gazette.

INSTRUCTION 10 dated 1st April 2009 regarding the National Bank of Romania (NBR) reference interest rate for April 2009 (Official Gazette 210/2009)

For the month of April 2009, the NBR reference interest rate is 10.07% per annum.

EMERGENCY ORDINANCE 29 dated 25 March to amend Law 571/2003 – Fiscal Code (Official Gazette 194/2009)

This Ordinance sets the level of excises for some excisable products. Thus, the level of excises on cigarettes is set at Euro 57 per 1,000 cigarettes and is applicable from 1st April to 31 August 2009, representing Euro 35.06 per 1,000 cigarettes + 23% of the declared minimum retail price. This Ordinance entered into force 1st April 2009.

ORDER 614 dated 31 March 2009 on the minimum level of excise taxes on cigarettes (Official Gazette 210/2009)

From 1^{er} April to 31 August 2009, the minimum level of excises on cigarettes is Euro 51.87 per 1,000 cigarettes, i.e. RON 193.81 per 1,000 cigarettes. Order 3687/2008 on the minimum level of excise taxes on cigarettes is abrogated 1st April 2009.

ORDER 529 dated 19 March 2009 to amend and complete methodological Norms to organize and conduct accountability for public institutions, the Chart of Accounts for public institutions and instructions for its use, approved by OMFP 1917/2005 (Official Gazette 221/2009)

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 8.48	
Average monthly gross salary (INSSE February 2009)	1,863 RON	
Per diem (in Romania)		
Employees in the public sector	13.00 RON	
Employees in the private sector (*2.5)	32.50 RON	

ORDER 392 dated 31 March 2009 to amend allocation Methodology for amounts paid into the sole account by taxpayers and extinction of tax liabilities recorded in this respect, approved by ANAF President's Order 1314/2007 (Official Gazette 215/2009)

In case the taxpayer makes a payment into the sole account larger than the amount of fiscal debts, current and/or outstanding, the allocation of the amount is made in accordance with the methodology up to the amount of debts recorded for the taxpayer. Regarding the amount in excess, if the amount has been paid into the "Resources of the State Budget – amounts collected for the State Budget into the sole account, allocation in progress" account, this difference remains recorded in this account. If this amount was paid into the sole account for "Treasury available for the Budgets for social insurance and special funds, allocation in progress," this difference is allocated by the tax authority, on the last working day of the month, in accordance with approved methodology.

LAW 93 dated 8 April 2009 regarding non-banking financial institutions (Official Gazette 259/2009)

This Law regulates minimum conditions to access loan activity and performance of this activity in Romania by non-banking financial institutions to ensure and maintain financial stability. The provisions of this Law also apply to branches of financial institutions in Romania whose headquarters are abroad.

REMINDER – Adjustment to taxable profit regarding closed fiscal years to correct accounting errors

We remind that in accordance with provisions of the Fiscal Code (article 19) and Norms for application of the Fiscal Code, revenue and expenses which were inaccurately recorded or omitted are corrected by adjusting taxable profit for the tax period they refer to.

When improper recording or omission of revenue or expense is discovered after the submission of the annual corporate tax return, **the taxpayer must submit an adjusted corporate tax return (form 101) for the year it refers to.** In case this adjustment triggers an additional corporate tax to be paid, the tax-

payer is also liable for interest and penalties for late payment of this additional corporate tax in accordance with the law.

MAY 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 May 2009 (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 11 May is the last day to submit

- Return on collection of hotel tax

That Monday 11 May is the last day to pay

- Hotel tax
- Advertising service tax

That Friday 15 May is the last day to submit

- INTRASTAT statement for April 2009.
- Special income statement, code 14.13.01.13. Form 200 is to be filed by persons who obtain income (cash or in kind) from:
 - Independent activities;
 - Rental activities of personal or real property;
 - Agricultural activities taxed using current value system based on single entry accounting information;
 - Capital gains on sale of securities.
- Statement regarding income obtained from abroad, code 14.13.01.13/7. Form 201 is prepared by natural persons domiciled in Romania, who obtain income from abroad due to their activity abroad. For each income source country and for each category of income, a separate statement is to be submitted by taxpayers.
- Application regarding destination of amount representing 2% of the annual income tax**, code 14.13.04.13. Form 230 is to be filed by natural persons who obtained salary income in 2008 and wish to **sponsor** legal non-profit entities with an amount of up to 2% of annual tax. A copy of tax form F1 or F2 is to be attached to the application.
- Application regarding the destination of the amount representing 2% of annual income tax, code 14.13.04.13/1. Form 231 is to be filed by natural persons who obtained agricultural income in 2008 and wish to sponsor, with an amount of 2% of their annual tax, legal non-profit entities or to be refunded for private scholarships they support.

That 15 days after the approbation of the financial statements by the Shareholders General meeting, the financial statements must be submitted to the Trade Register.

That Monday 25 May 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)*
- Recapitulative Statement of EU supplies/acquisitions regarding Quarter I 2009 (form 390)*
- 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 25 May 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
- Contribution to the Environment Fund
- Gambling tax.

That Monday 1st June is the last day to submit Financial Statements as at 31.12.2008

- for commercial companies, national companies, "regii autonome," national institutes for research and development
- for permanent establishments of legal entities in Romania with registered headquarters abroad
- for the Fiscal representative which is a legal entity.

That Monday 1st June is the last day to adjust without fine

- Quarterly recapitulative statements of EU acquisitions/ supplies of goods (form 390) with due date prior to 1st May 2009 (as per OUG 34/2009)

IMPORTANT

Once the 2008 financial statements are submitted, the very last operations to complete the accounting and fiscal evidence of the year are:

- Complete the Register of fiscal evidence
- Maintain the Inventory Register
- Check that the minutes of the inventory committee and decisions for writing off assets are signed
- Archive the primary accounting documents (which usually ought to be kept for 10 years except for the list of the exceptions set per Order 3512 dated 27.11.2008 –Official Gazette 870/2008 to be kept 5 years);
- Mandatory accounting registers, i.e. the Journal Register, Inventory Register and General Ledger (code 14-1-3) are kept within the enterprise for 10 years;
- Payroll statements are to be kept for 50 years;
- Retention period for financial statements has been reduced to 10 years per Law 259 dated 19 July 2007 to amend and complement Law 82/1991 (Official Gazette 506/2007).

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.



56 Boulevard Dacia,
District 2, Bucharest

Tel: +40 (0) 31-809 2739

Tel: +40 (0) 74-520 2739

Fax: +40 (0) 31-805 7739

E-mail: office@apex-team.ro

Site: www.apex-team.ro

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 team specialised in payroll administration on behalf of the client.

We provide a full range of accounting services, payroll services, local tax compliance and tax advice, as well as services tailored to your company needs:

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



The above information is a short summary of recently published information and is not intended to be advice on any particular matter. APEX Team International disclaims liability to any person in respect of anything done in reliance of the contents of these publications.