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**DECISION 488 dated 28 April 2009 to complement Implementation methodological Norms of Law 571/2003 – Fiscal Code approved by Government Decision 44/2004 (Official Gazette 286/2009)**

**Minimum Tax**

To determine the amount of minimum tax due, the following issues must be considered:

- profit tax pertaining to the quarter or year is determined as per provisions of Title II of the Fiscal Code;
- the relevant income bracket is determined as per article 18 point 3 of the Fiscal Code depending on total income registered as at 31 December of the previous year from which income mentioned in point 4 of article 18 of the Fiscal Code are deducted;
- the quarterly or annual minimum tax due corresponds to the income bracket described above;
- quarterly/annual profit tax is further compared to the quarterly/annual minimum tax. The taxpayer must declare and pay the higher amount.

Below are 2 examples presented in Decision 488:

Case 1 – An enterprise has computed a profit tax of RON 250 at the end of Quarter II.

Case 2 – An enterprise has computed a profit tax of RON 500 at the end of Quarter II.

As per the provisions of article 18 point 2, the taxpayer registered total annual income as at 31 December 2008 of RON 40,000. The corresponding minimum tax for this level of income is RON 2,200. For the 1<sup>st</sup> May to 30 June 2009 period, the minimum tax is computed by dividing the annual minimum tax by 12 and then multiplying by 2 (for the months of May and June) i.e.  $(2,200/12) \times 2 = \text{RON } 367$ .

Case 1– As profit tax due for Quarter II is RON 250 and minimum tax computed for the same period is RON 367, the taxpayer must pay the minimum tax in amount of RON 367.

Case 2– As profit tax due for Quarter II is RON 500 and minimum tax computed for the same period is RON 367, the taxpayer must pay a profit tax in amount of RON 500.

Decision 488 states the following transitory measures and special regulations:

- For Quarter II 2009, a comparison will be made between the corporate tax due and minimum tax pertaining to the months of May and June computed by dividing the minimum tax by 12 and then multiplying by 2.
- To compute the profit tax pertaining to Quarter IV 2009, from the amount of profit tax computed cumulated from the beginning of the year, profit tax pertaining to previous periods including the minimum tax due if case is deducted up to the amount of the minimum tax due for the fiscal year.

*Example*

An enterprise posts a fiscal loss at the end of Quarter I and at the end of Quarter II. As per provisions of article 18 point 2, the taxpayer registered total annual income of RON 300,000 as at 31 December 2008, which results in a minimum tax of RON 6,500. For the 1<sup>st</sup> May to 30 June 2009 period, the minimum tax is computed by dividing the annual minimum tax by 12 and then multiplying by 2 (for May and June) i.e.  $(6,500/12) \times 2 = \text{RON } 1,083$ . The outcome is that for Quarter II, the taxpayer must pay a minimum tax of RON 1,083.

Assume accumulated profit tax through Quarter III is RON 6,000. To determine the tax due for Quarter III, the following calculation is made:  $6,000 - 1,083 = \text{RON } 4,917$ . The comparison is then made between profit tax pertaining to Quarter III, i.e. RON 4,917 and the minimum tax pertaining to this period  $(6,500/12) \times 3 = \text{RON } 1,625$  (annual minimum tax of RON 6,500 divided by 4 quarters), the outcome is that the profit tax of RON 4,917 is due.

At year end 2009, the taxpayer posts a fiscal loss. In Quarter IV, the minimum tax of RON 1,625 is due (RON 6,500 divided by 4 quarters). Under these circumstances, the profit tax to recover represents the taxes due during the respective fiscal year of RON 7,625 (RON 1,083 for Quarter II, RON 4,917 for Quarter III and RON 1,625 for Quarter IV) less the annual minimum tax of RON 4,333 (RON  $(6,500/12) \times 8$  [for May to December]).

- Profit tax pertaining to a quarter or year is determined as per provisions of Title II of the Fiscal Code, including articles regarding recovery of fiscal losses which are disclosed in article 26 of title II "Profit tax."

*Example*

An enterprise posts a fiscal loss of RON 700 at the end of 2008. During 2009, the enterprise posts a fiscal loss for Quarter I but for Quarter II has a taxable profit of RON 13,200. Profit tax

pertaining to Quarter II is  $(13,200-700) \times 16\% = \text{RON } 2,000$ . As per provisions of article 18 point 2, the taxpayer will consider total annual income registered as at 31 December 2008, to determine its minimum tax of RON 2,200 RON which is the minimum tax corresponding to total annual income of RON 35,000. For the 1<sup>st</sup> May to 30 June 2009 period, the minimum tax is computed by dividing the annual minimum tax by 12 and then multiplying by 2 (for May and June) i.e.  $(2,200/12) \times 2 = \text{RON } 367$ . As profit tax due for Quarter II is RON 2,000 and minimum tax computed for the same period is RON 367, the taxpayer must pay the profit tax in amount of RON 2,000.

- ☑ Minimum tax does not apply to taxpayers who are temporarily inactive as at 1<sup>st</sup> May 2009 or stop trading during 2009 as well as enterprises established in 2009.
- ☑ Entities established in 2009 further to reorganization must pay the annual minimum tax starting the date of registration with the Trade Register. In case of merger, to determine the annual minimum tax, total annual income of the involved entities is added together. In case of spin-off, total annual income is determined in proportion to total assets and liabilities transferred to the new separate entities as per the spin-off project.

We mention that the above provisions apply to tax on micro enterprise income .

#### Limitation to the right to deduct petrol expenses and related VAT for some vehicles

Terms and conditions mentioned in provisions of OUG 34 (Official Gazette 249/2009) regarding vehicle expense deductions and associated VAT deductions are clarified as follows in the present Implementation Norms:

- ☑ vehicles used exclusively for repair and/or intervention: Vehicles which are or are not equipped with specific technical devices and are used by specialized staff to repair goods and for interventions;
- ☑ vehicles used exclusively for security services and protection: Vehicles used to ensure the security of premises, goods and valuables against any illicit action which encroach property rights, their physical existence as well as for the protection of persons against any hostile act which can endanger life, physical integrity or health;
- ☑ vehicles used exclusively for courier services: Vehicles which are used for receiving, transport and distribution of letters, parcels and bags;
- ☑ vehicles used exclusively for news reports: Road vehicles specially designed to carry specific technical equipment for audio video registration or complex video or audio and/or data transmission by megahertz sound waves or by optic means, capable of emitting TV or radio broadcasts recorded or transmitted live or across distances through radio frequency techniques (radio relay, transmission by satellite) or by fiber optic, TV or radio signal transfer to other news media vehicles, to a television centre or to the central radio broadcasting station;
- ☑ vehicles used exclusively for sales agents: Vehicles used in the performance of activity of taxable entities by its employees who are mainly in charge of market development, merchandising, negotiation of sales terms, performing sales activities, after sale services and monitoring clients. VAT deductibility is limited to one vehicle per sales agent at most. This category of vehicles includes test drive vehicles used by the automobile dealers;
- ☑ vehicles used exclusively for transport of staff to and from the workplace: Vehicles used by employers to transport staff for the purpose of performing an economic activity, from their domicile/agreed upon location to the employer's registered address, or from the employer's registered address to where the activity is actually performed when there are obvious difficulties in finding other means of transport

and a collective agreement exists between the employer and its employees to provide this transportation service free of charge;

- ☑ vehicles used exclusively for recruiting agents: Vehicles used in the performance of recruiting agency who mainly deal in recruitment and placement of labour. The deductibility of VAT is limited to one vehicle per recruiting agent at the most;
- ☑ vehicles used exclusively for rendering services for a fee: **Vehicles which directly contribute in an essential manner to the provision of services for a fee and without such vehicle the services could not be rendered.**

#### Fixed asset revaluation reserves

The fiscal regime for reserves for the revaluation of fixed assets and land which occurred after 1<sup>st</sup> January 2004 which are registered in account "1065" as at 30 April 2009 does not change. However, these reserves become taxable the moment their scope changes as per article 22 point 5 of the Fiscal Code.

#### DECISION 616 dated 20 May 2009 to amend point 701 of methodological Implementation Norms for Law 571/2003 – Fiscal Code approved by Government Decision 44/2004 (Official Gazette 351/2009)

The interest rate for loans denominated in foreign currency is capped at 8% (previously 7%) for the purpose of determining taxable profit, starting in 2009.

#### ORDER 343 dated 14 April 2009 to amend and complement Implementation Norms for provisions of Law 19/2000 regarding State pension regime and other social insurance rights, with its subsequent amendments and complements, approved by Order 340/2001 of Ministry of Labour and Social Solidarity (Official Gazette 310/2009)

This Order clarifies how employers which apply OUG 28 on measures for social protection in case of technical unemployment (Official Gazette 186/2009) should file statements regarding contributions to public social insurance (*pension*). The employer must submit a list of insured persons who are temporarily inactive in accordance with legal provisions, on a monthly basis. Thus, 2 pension contribution statements will be submitted: one including the insured persons who are unemployed for technical reasons and the second for other employees. Therefore, if an employee has been unemployed for a part of the month and has worked for the remaining part of the month, the same person will be disclosed on each statement.

#### ORDER 788 dated 24 April 2009 to amend Order 552/2008 of ANAF President to approve model and content of "Recapitulative statements of EU acquisition/supply of goods" form (Official Gazette 281/2009)

Operations disclosed on "Adjustments" rows of the VAT return, meaning rows 2, 5 and 16, are included in the adjusted recapitulative statement 390 afferent to the period these operations refer to.

#### EMERGENCY ORDINANCE 46 dated 13 May 2009 to improve fiscal procedures and to fight tax evasion (Official Gazette 347/2009)

This Ordinance introduces **amendments to the Code for Fiscal Procedure**, OUG 91/2003, regarding organisation of the Financial Guard and other fiscal provisions, among which we mention:

#### Measures in the field of fiscal procedures

- ☑ The person holding a power of attorney must file it at the tax authorities in a written form, original or legalized copy. The revocation of the power of attorney is effective at the date it is submitted at the tax authorities.

☑ Taxpayers, whether legal entities or not, are declared inactive when the provisions of article 11 points 11 and 12 of Law 571/2003 – Fiscal Code, with its further amendments and complements, apply and if they fulfil one of the following conditions:

- a) they did not comply with any declarative obligations set by law for a half year period;
- b) they have been shielded from tax inspection by declaring identification data regarding their registered address which has not enabled location by tax authorities;
- c) tax authorities have noted that the entity carries out activity at the registered address or domicile as declared.

By exception from the above, taxpayers in insolvency will not be considered inactive as well as those for which a decision of dissolution has been pronounced or taken.

☑ In case of temporary inactivity or in case of obligation of declaration of income which are by law exempt from income tax, tax authorities can approve upon request of the taxpayer other deadlines or conditions for submission of tax returns depending on requirements to administrate fiscal obligations. The tax authorities will decide deadlines and conditions in accordance with its authority as approved by an ANAF President's Order.

#### **Fiscal certificate**

☑ The fiscal certificate is issued on the basis of data included in tax authorities records which include outstanding fiscal liabilities, closing balances on the last day of the month prior to the application, named reference period as well as fiscal debts not settled up to the issue date of the certificate.

☑ In case the fiscal certificate is issued during the first 5 working days of the month, it will include outstanding fiscal debts, closing balances at the end of the month prior to the reference period as well as fiscal debts not settled up to the issue date of the certificate.

☑ The fiscal certificate is issued within 5 working days of submission of the application and can be used by the taxpayer for a period of 30 days starting with the issue date. For a natural person, the tax certificate can be used for up to 90 days. For the entire period of validity, the tax certificate can be presented by the taxpayer in original or legalized copy to any person or entity requesting it.

☑ The fiscal debts in principal and incidental liabilities noted by the tax inspection bodies within ANAF can be paid 90 days after due date at the latest but no later than 25 December of each fiscal year.

#### **Penalties for late payment**

☑ As for fiscal debts originating prior to or after the decision date for taxpayer dissolution with the Trade Register, starting this date, penalties for late payment are not due or calculated.

#### **Re-scheduling and agreement under conditions for new terms of payment for instalments which have not been respected due to the economic crisis**

☑ Conditions under which debtors who benefited from scheduling overdue fiscal debts granted on the basis of legal dispositions may benefit from re-scheduling amounts which remain unpaid with all the consequences set by law when conditions set in the Ordinance are fulfilled.

#### **INSTRUCTION 14 dated 4 May 2009 regarding the National Bank of Romania (NBR) reference interest rate for May 2009 (Official Gazette 290/2009)**

For the month of May 2009, the NBR reference interest rate is 10.02% per annum.

#### **ORDER 5 dated 23 April 2009 on reporting positions regarding classification of risk exposure from loans/investments and subsequent requested levels of specific provisions for credit risk (Official Gazette 284/2009)**

This Order sets the form and content of the forms for reporting the positions which will be transmitted periodically to NBR as per provisions of article 26 point 1 of Regulation 3/2009 on the classification of loans and investments as well as the constitution of specific provisions for credit risk, with its further amendments, by lenders as defined at article 2 letter C) of this Regulation. Provisions of this Order regarding risk exposure for loans/investment are only applicable to credit institutions.

#### **REGULATION 7 dated 23 April 2009 to amend NBR Regulation 3/2009 regarding classification of loans and investments as well as the constitution, adjustment and use of specific provisions for credit risk (Official Gazette 284/2009)**

Credit institutions must comply with provisions of this Regulation starting the month when the Monitoring Inspectorate with NBR will communicate its decision to approve Internal Norms, or starting the month following approbation date but no later than 30 September 2009.

#### **ORDER 1128 dated 26 May 2009 to approve the model and content of "Certificate to attest the payment of VAT in case of EU acquisition of new means of transport" and "Certificate" forms as well as the procedures for their issue (Official Gazette 356/2009)**

☑ The model and content of the "Certificate to attest the payment of VAT in case of EU acquisition of new means of transport," code M.F.P. 14.13.21.02/a.i.n is approved. It is used to certify payment of VAT by persons who purchase new means of transport from the EU for the purpose of registering the purchased item in Romania. It is issued in 2 copies by tax authorities responsible for administration of natural persons

☑ The model and content of the "Certificate," code M.F.P. 14.13.21.02/a.i. is approved. It is used to certify that, from the documentation presented to tax authorities, it results that for the respective EU acquisition of new means of transport which is to be registered in Romania, VAT is not due as it is not an acquisition of a new means of transport.

The forms and procedures described in this Order apply to issuance of certificates which are requested upon registering a means of transport purchased in EU member States, in Romania, by persons that are not registered under the scope of VAT and are not required to do so as per article 153 of Law 571/2003 – Fiscal Code.

The present procedure DOES NOT APPLY TO:

☑ EU acquisitions of means of transport by persons registered under the scope of VAT in accordance with article 153 of the Fiscal Code;

☑ Means of transport purchased in Romania or imported from outside the EU.

We remind what new means of transport are as per article 125<sup>1</sup> point 3 of the Fiscal Code:

☑ motor road vehicles where capacity exceeds 48 cc<sup>3</sup> or power exceeds 7.2 KW aimed for the transport of passengers or goods, under the condition that they have not been delivered more than 6 months after commissioning or have no more than 6,000 KM;

☑ boats where length does not exceed 7.5 meters, under the condition that they have not been delivered more than 3 months after commissioning or have not been operated for more than 100 hours, except for: ships at sea used for navigation in international waters, passenger transport for

**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 March 2009)	1,922 RON	
Per diem (in Romania)		
Employees in the public sector	13.00 RON	
Employees in the private sector (*2.5)	32.50 RON	

a fee, carrying out commercial, industrial or fishing activities, rescue operations, assistance out at sea or for coastal fishing;

- planes with weight at take-off exceeds 1,550 tons, under the condition that they have not been delivered more than 3 months after commissioning or they have not logged more than 40 hours of flying time, except for planes which fly over international routes for a fee.

**LAW 156 dated 26 July 2000 regarding protection of Romanian citizens working abroad – republished (Official Gazette 291/2009)**

**DECISION 12 dated 14 April 2009 to approve Norm 9/2009 on client knowledge for the purpose of preventing money laundering and financing terrorism acts within the private pension regime (Official Gazette 288/2009)**

This Decision applies to the managers of private pension funds, in their own name and to private pension funds they administer as well as to licensed marketing agents within the private pension regime.

Managers/marketing agents must make adequate provisions in the performance of their activity for preventing money laundering and financing terrorism acts and in this scope, by category of risk, must apply standard, simplified or additional measures regarding client knowledge.

**INFORMATION – TRADE REGISTER – Company features, as per article 237 of Law 31/1990**

Regarding the information published by the Trade Register, checking the following company features is recommended:

- duration of validity of the title for the registered address;
- duration of the mandate of the Director;
- duration of the mandate of the "cenzor(s)";
- annual financial statements filed.

The above mentioned information can be checked online

<http://semnal.onrc.ro/cgi-bin/semnal.cgi>

If the company complies, it does not appear on to the list.

In case of expiry of duration, drafting an addendum to the Constitutive Deed is necessary (further to a resolution of shareholders meeting/addendum/ rental contract for the registered address, etc.) as well as its presentation within 15 days at the Trade Register for registration of the changes ("*mentiuni*"); In case of non submission of the annual financial statements within 6 months after year end, fines can be applied and finally radiation.

#### JUNE 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 June 2009 (but be aware that the deadline of the 15<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> May 2009 (as per OUG 34/2009)

#### That Friday 5 June is last day to submit

- Form 010 (amendments) to change from Quarterly to Monthly VAT returns in case EU acquisitions have been made in May 2009. Starting June, the VAT return will be submitted monthly and a separate return for the period 1st April to 30 May 2009 will be submitted.

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

- Return on collection of hotel tax

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

- Hotel tax
- Advertising service tax

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

- INTRASTAT statement for May 2009.

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

- Tax on billboards (2<sup>nd</sup> instalment)

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

#### That Monday 22 June is the last day to pay:

- Tax on Rep. Office (1<sup>st</sup> instalment – 50% of the lump tax of Euro 4,000)

#### That Thursday 25 June 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 supply/acquisition 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 Thursday 25 June 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 Tuesday 30 June is the last day to submit;

- Annual return on agricultural income (based on norms of income) for the year 2008 (form 215, code 14.13.01.13/9);
- Informative 2008 annual statement per beneficiary of income on the amount of tax withheld on income subject to withholding tax (form 205, code 14.13.01.13/l): dividends, interest, income from prizes and gambling, pensions, income from liquidation/dissolution and other income.

#### 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: <http://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 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**



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