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## **LAW 76 dated 6 May 2010 to approve Emergency Government Ordinance 109/2009 to amend and complement Law 571/2003 – Fiscal Code (Official Gazette 307/2010)**

This Law introduces the following amendments to the Fiscal Code:

- The fact that **regulations regarding transfer pricing also apply to Romanian related parties** is expressly specified. The direct consequence is that the transfer price file can also be requested when Romanian related parties are involved (see Reminder below, about the content of the transfer price file).
- Changing from quarterly VAT returns to monthly VAT returns occurs only in case of an EU acquisition of **goods** and not of services is clearly mentioned.
- The Law states that minimum tax does not apply to taxpayers:
  - o under an insolvency procedure, starting with the inception date of this procedure as per law;
  - o when dissolution is in progress, starting the date of registration of this status with the Trade Register or with judicial authorities as per law;
  - o Entities dissolved by law at expiry of the duration set in the constitutive deed or further deeds, starting the dissolution date thus set. These provisions do not apply to taxpayers in dissolution without liquidation.
- Provisions regarding tax on income of the micro enterprise are expressly abrogated.
- 50% of the tax on capital gains realized by an individual upon disposal of property now represents a resource to the Budget of local authorities where property is located (previously, the entire tax went to the State Budget).
- Salary income obtained by disabled persons are not taxable irrespective of whether derived from their main or secondary occupation.
- The ceiling for small wine producers without fiscal warehouse increases from 200 to 1,000 hl per annum.

## **ORDER 1803 dated 3 May 2010 to approve model and content of form 205 "Informative statement on amount of tax withheld from income subject to withholding, by beneficiary" (Official Gazette 308/2010)**

This Order approves model and content of form 205 " Informative statement on amount of tax withheld from income subject to withholding, by beneficiary ", code 14.13.01.13/I. The new form is used to declare, by 30 June 2010, tax withheld from income obtained starting 1<sup>st</sup> January 2009.

The statement is completed and submitted by the party which pays the beneficiaries and has the obligation to calculate, withhold and transfer the income tax withheld, except for income from employment and assimilated income, as per Title III of Law 571/2003 – Fiscal Code.

Income declared on this form for 2009 are the following:

- Intellectual property rights;
- Sales of goods under consignment regime;
- Income derived from an agent contract;
- Income derived from a commission or commercial contract;
- Income derived from accounting and technical expertise, judicial and extrajudicial expertise;
- Income derived from civil contracts as per Civil Code;
- Independent activities carried out through association with a legal entity;
- Gains on disposal of securities held more than 365 days;
- Gains on disposal of securities held up to 365 days;
- Gains on forward contracts for purchase or sale of foreign currency or any similar transactions;
- Dividends;
- Interest;
- Gains on disposal of securities under final taxation regime;
- Revenue from liquidation;
- Premiums and gambling revenue;
- Pensions;
- Income from agricultural activities;

Other income.

Tax on dividends attributed but not paid to a shareholder before the end of the year when annual financial statements are approved is declared in the declaration regarding the period when annual financial statements were approved.

**ORDER 1786 dated 28 April 2010 to approve procedures for amending ex officio the fiscal status regarding VAT as well as model and content of forms (Official Gazette 292/2010)**

The Order approves the ex officio amendment procedure of fiscal status regarding VAT in the following 4 circumstances:

**Ex officio registration of the taxpayer should have registered under the scope of VAT and did not**

Steps:

- Tax authorities send a notification;
- Within 5 days upon receipt, the taxpayer must submit form 010 in order to register under the scope of VAT. If submitted, the taxpayer is registered under the scope of VAT starting the 1<sup>st</sup> of the month subsequent submission of form 010;
- If the taxpayer does not register, tax authorities drafts a memo proposing registration;
- Head of tax authority approves registration;
- On the grounds of the approved memo, the registration resolution is issued;
- The resolution is transmitted to the taxpayer;
- The taxpayer can challenge the resolution within 30 days from date of communication;
- In case of ex officio registration, it enters into force on 1<sup>st</sup> of the month following communication.

Observations:

In case the taxpayer submits form 010 to register while the procedure is in progress, the procedure stops and the taxpayer will be registered starting 1<sup>st</sup> of the month after submission of form 010.

If in case of a tax inspection it is found out that a taxpayer ought to have registered under the scope of VAT and did not, the above mentioned steps do not apply and the registration resolution will be issued on the grounds of the tax inspection report and/or resolution regarding additional fiscal liabilities.

**Ex officio deregistration for the scope of VAT for taxpayers in temporary inactivity declared at the Trade Register**

Steps:

- The General Inspectorate for Local (*Judet*) Public Finance, for Bucharest or for large taxpayers identifies taxpayers in its sphere of administration for whom temporary inactivity was registered with the Trade Register from the database made available by the Trade Register;
- The list of taxpayers involved is communicated to local tax authorities;
- Tax authorities draft a memo proposing deregistration of the taxpayers involved from the VAT regime;
- Head of tax authority approves registration;
- On the grounds of the approved memo, the deregistration resolution is issued;
- Date of ex officio deregistration from the scope of VAT is the 1<sup>st</sup> of the month following the month when temporary inactivity was registered with the Trade Register;
- The resolution is transmitted to the taxpayer;
- The taxpayer can challenge the resolution within 30 days of date of communication.

The procedure is identical in case of taxpayers registered normally under the scope of VAT (as per article 153) and if only registered for EU transactions (as per article 153<sup>1</sup>).

**Ex officio deregistration from the scope of VAT for inactive taxpayers**

Steps:

- After issue of an Order to declare a taxpayer inactive, the General Inspectorate for Information transmits the list of inactive taxpayers to the General Inspectorate for Local (*Judet*) Public Finance, for Bucharest or for large taxpayers;
- The list of inactive taxpayers must be forwarded to local tax authorities within 2 working days after receipt;
- Tax authorities draft a memo proposing deregistration of inactive taxpayers involved from the VAT regime ;
- Head of tax authority approves registration;
- On the grounds of the approved memo, the deregistration resolution is issued;
- Date of ex officio deregistration from being subject to VAT is the 1<sup>st</sup> of the month following the month when the Order issued by ANAF President declaring the taxpayer inactive was issued;
- The resolution is transmitted to the taxpayer;
- The taxpayer can challenge the resolution within 30 days from date of communication.

The procedure is identical in case of taxpayers registered normally for the scope of VAT (as per article 153) and if only registered for EU transactions (as per article 153<sup>1</sup>).

**Ex officio deregistration under the scope of VAT for taxpayers registered normally under the scope of VAT for EU transactions**

Registration under the scope of VAT for EU transactions (as per article 153<sup>1</sup>) is cancelled starting the date of normal registration for the VAT regime.

**ORDER 1059 dated 5 May 2010 to amend and complement texts of law regarding taxpayer fiscal registration (Official Gazette 318/2010)**

The Order introduces complements to previous Ministry of Public Finance Orders and approves a new model for form 010 "Tax registration statement/Declaration of mentions (*changes*) for legal entities, associations and other entities".

**INSTRUCTION 15 dated 3 May 2010 regarding the reference interest rate of the National Bank of Romania (NBR) for the month of May 2010 (Official Gazette 288/2010)**

For the month of May 2010, the NBR reference interest rate is 6.50% per annum.

**ORDER 430 dated 11 May 2010 to amend and complement Implementation Norms of Emergency Government Ordinance 158/2005 regarding sick leave and compensation from social health insurance, approved by Order of Health Ministry and President of National Health Insurance House 60/32/2006 (Official Gazette 312/2010)**

Among the amendments introduced by this Order, we mention:

- The insured person must communicate his/her temporary absence from work as well as identification of the physician (name and location) who prescribed sick leave to the entity which will pay compensation from health insurance **within 24 hours** from the date the sick leave certificate was issued. In case reasons for sick leave occur during a non business day, the insured person must inform the entity which will pay compensation from health insurance on the 1<sup>st</sup> business day;
- The employer must transmit the list of employees who are temporarily absent from work as well as identification data (name and location) of the physician who prescribed sick leave to the Health insurance house **within 6 days** starting the date information was received;

- ☑ **Audit of the presence** of the insured person on sick leave at his/her domicile or at the address indicated can be performed **between 08.00 h - 11.00 h, 12.00 h - 17.00h, and 18.00 h - 20.00 h**. Audit meeting minutes will be signed by the audit committee and by the insured person;
- ☑ The number of days of sick leave prescribed by a family physician is reduced to 10 at a most for one or several sick leave periods, but not exceeding 30 days for one calendar year;
- ☑ New provisions regarding sick leave and compensation from health insurance are introduced for migrant workers;
- ☑ The monthly social security statement regarding liabilities to the National Fund for health insurance, medical leave and compensation from health insurance is amended.

**ORDER 471 dated 11 May 2010 to approve Implementation Norms of provisions of article 51 point 3<sup>1</sup> of OUG 158/2005 regarding sick leave and compensation from social health insurance (Official Gazette 327/2010)**

Audit of the presence of the insured person on sick leave at his/her domicile or at the address indicated is performed by the contributor which pays compensation, accompanied, if necessary, by a police representative taking into account the timeframe that the specialized physician has prescribed for recovery of the insured person and only during hours mentioned in the statement that the insured person indicates when the sick leave certificate is issued.

The contributor which pays compensation can ask to be accompanied by a police representative upon audit of the presence of the insured person at his/her domicile or at the address indicated, for a smooth investigation and to avoid any disturbance of peace and public order.

During audit of the presence of the insured person on sick leave at his/her domicile or at the address indicated, the contributor which pays compensation and/or the police are not allowed to enter the insured person's lodgings.

**EMERGENCY ORDINANCE 37 dated 14 April 2010 to amend and complement Government Ordinance 10/2004 regarding bankruptcy of credit institutions (Official Gazette 278/2010)**

**REMINDER - ORDER 222 dated 8 February 2008 on 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 tax authorities, prepare and present in the time frame set by tax authorities, a transfer price file.
- ☑ The request for 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 by the deadline set by tax authorities is deemed to represent transactions performed with related parties without justification of the transfer prices used and will trigger assessment of the transfer prices by tax authorities.
- ☑ In case the taxpayer is applying anticipated price agreements issued by ANAF ("Agentia Nationala de Administrare Fiscala "), 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;
- ☑ General presentation of transactions with related parties:
  - o transaction mode;
  - o invoicing mode;
  - o value of transactions.
- ☑ General description of functions and risks assumed by related parties, included 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 those issued by ANAF.

**Information about the taxpayer**

- ☑ Detailed presentation of transactions with related parties:
  - o transaction mode;
  - o invoicing mode;
  - o value of transactions.
- ☑ Presentation of comparative analysis:
  - o features of goods or services;
  - o functional analysis (functions, risks, use of non-current assets, etc.);
  - o contractual terms;
  - o economic surroundings;
  - o specific business strategies;
  - o 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:
  - o in case the traditional methods of determination of transfer price are not used, this option will be justified;
  - o 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.

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

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

- ☑ period the title for the registered address is valid;
- ☑ 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.

## H.R. KEY FIGURES

2010 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 March 2009)	2,074 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 – Valuation of monetary items in foreign currency

Do not forget that starting 2010, at the end of each month, monetary items (cash on hand, receivables, payables) denominated in foreign currency are valued at the NBR exchange rate in force on the last banking day of the month.

This procedure also applies to receivables and payables denominated in RON but pegged to a foreign currency for collection/disbursement.

Exchange rates to use for valuation at the end of May 2010:

1 Euro = 4.1792 RON;  
1 USD = 3.3984 RON;  
1 CHF = 2.9379 RON;  
1 GBP = 4.9234 RON

### JUNE 2010 – AGENDA

#### Every day - do not forget

- To complete the petty cash register (or print electronic version)
- To complete the purchase ledger and sales ledger
- To update the employee electronic registers with information regarding labour contract termination, if any

#### 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 revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month**
- 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 2010

### To comply with 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 7 June is last day to submit

- Form 092 (amendments) to change VAT return periods from Quarterly to Monthly in case an EU acquisition of **goods** which occurred in May 2010. Starting June 2010, VAT returns will be submitted monthly.

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

- Return for collection of hotel tax

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

- Hotel tax
- Advertising service tax

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

- INTRASTAT statement for May 2010 (submitted on-line)
- Recapitulative statement of EU Supplies/acquisitions/services (form 390)\* for May 2010;**

**That Tuesday 15 June is the last day to pay**

- Income tax (advance payment) regarding Quarter III 2010

**That Friday 25 June is the last day to submit**

- State budget liability return (form 100)\*
- Social insurance and special funds liability return (form 102)\*
- 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 Friday 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 dividends
- 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
- Tax on Rep. Office (1<sup>st</sup> instalment – 50% of the lump tax of Euro 4,000)
- Annual license tax for gambling, with respect to Quarter II 2010.

**That Wednesday 30 June is the last day to submit**

- Informative 2009 statement of income on the amount of tax withheld and paid on income subject to withholding tax and exempted income, by non-resident beneficiary;
- Informative 2009 annual statement of income on the amount of tax withheld on income subject to withholding tax (form 205, code 14.13.01.13/l), by beneficiary: dividends, interest, income from prizes and gambling, pensions, income from liquidation/dissolution and other income.

**IMPORTANT**

Once the 2009 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–Official Gazette 870/2008 to be kept 5 years). Retention period for financial statements has been reduced to 10 years per Law 259 (Official Gazette 506/2007). Mandatory accounting registers, i.e. the Journal Register, Inventory Register and General Ledger are kept within the enterprise for 10 years. Payroll statements are to be kept for 50 years.

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](http://www.mfinante.ro) or from website ANAF: [www.anaf.ro](http://www.anaf.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 »**
- Certification of annual profit tax**
- Start up services**
- Organization of the accounting function**
- Assistance in implementation of ERP**
- Training**



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