

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

Contents:

- No more income tax for taxpayer with no activity and comparison between minimum tax and profit tax
- Non-residents - clarifications regarding taxation of capital gain on disposal of shares
- New legal and fiscal framework – distinction between dependent and independent activities
- Possible requalification of any activity from independent to dependent by tax authorities if a single criteria is not met
- Income paid regarding dependent activity is treated by the income payor as salary income
- The provider of independent or professional activity declares and pays his/her own contributions for pension, health and unemployment upon a capped base of RON 9,180
- Stricter regulations for tax on secondee income and short-term assignments in Romania
- VAT – clarification on price reductions and adjustments further to change in VAT rate
- Consequences of failure to register with EU Operators' Registry
- BNR reference interest rate, August 2010
- Ecotax for packaging to be declared and paid quarterly
- Valuation of monetary items in foreign currency as at 31.08.2010
- September 2010 Agenda
- Key HR figures with enterprise and individual contributions for employees and dependent activities
- Social contributions capped for independent and professional individuals
- Social contributions capped after a set deduction for authors

DECISION 791 dated 2 August 2010 to amend and complement Implementation Norms of Law 571/2003 – Fiscal Code, approved by Government Decision 44/2004 and to approve Implementation Norms of provisions of article III of Emergency Government Ordinance to amend and complement Law 571/2003 – Fiscal and other financial and fiscal measures (Official Gazette 542/2010)

We present the main amendments introduced by this Decision. The amendments regarding social legislation are disclosed separately in the second half of this edition and are summarized after the "HR Key indicators" caption.

General provisions

The definition of a permanent establishment disclosed in the Norms is amended to be aligned with amendments introduced by OECD.

In cases where the books of an entity ought to be reassessed to apply market prices to transactions between related parties, this reassessment must also be made in the corresponding related party books. Provisions which prevented pricing on transactions between legal Romanian entities from being adjusted are abrogated.

Tax on profit

- Minimum tax does not apply to entities which declared under own responsibility that no activity is carried out at its registered headquarters/secondary establishments, the status registered as per legal provisions at the Trade Register or with the registry kept by judicial authorities in charge, if applicable.
- The Decision shows an example for computation of profit tax compared to minimum tax, which permits the conclusion that for the 2010 tax year, annual profit tax will be compared to annual minimum tax (which was not the case in 2009).
- Expenses which represent a decrease in value of ownership interest further to a reduction in share capital of the entity whose ownership interest is held or further to a revaluation in accordance with accounting regulations are disallowed expenses when determining taxable profit.
- Expenses incurred for services aimed to make the taxpayer's business more efficient, to optimize efficiency, or for an operational and/or financial reorganization are deemed expenses incurred for the purpose of generating taxable income.
- Upon determination of adjustments of value (either increase or decrease) of long term financial investments, bonds falling due after one year or more are considered long term financial investments.
- To obtain a tax credit in Romania, payment of the tax in a foreign State must be confirmed by the authority in charge in this State. The possibility for the taxpayer to make use of the exemption to avoid double taxation prevailing in provisions of the treaty concluded between Romania and the other State is expressively stated.

Tax on dividends

Regulations regarding withholding tax on dividends are clarified as follows:

- If dividends from prior year profit are declared in the current year, but not received until the subsequent year, the deadline for payment of tax on dividends is 25 January of the subsequent year.
- If dividends from prior year profit are declared and received in the current year, the deadline for payment of tax on dividends is the 25th of the month subsequent to the month when dividends were received.

We mention that dividends may only be paid after annual financial statements are approved. Dividends allocated and paid after 1st January 2009 from profits carried out from years prior to 2007 can also be exempted from payment of tax on dividends if the conditions regarding exemption are met (Romanian legal entity, percentage and length of holding).

Income tax

Income from investments

Interest received after 1st July 2010 is income subject to the taxation rate of 16%. New regulations are set regarding computation and payment of capital gain tax upon disposal of securities other than shares and securities of closed companies.

Rental income

In case of termination of a rental contract, the taxpayer who is an individual must inform the tax authorities in writing within 5 days.

Tax on income obtained by non-residents

Non-residents are also subject to tax on interest received after 1st July 2010.

How tax on capital gain on disposal of securities is withheld is clarified as follows:

- The non-resident legal entity or individual earning a capital gain upon disposal of securities or shares of closed companies must submit a copy of its/his/her tax residence certificate:
 - o With its/his/her fiscal representative or empowered person in Romania in charge. The fiscal representative or empowered person may then proceed to fulfil fiscal and declarative obligations
 - o And also with the entity whose securities/shares were disposed of;
- In case the purchaser of securities or shares of closed companies is a non-resident entity or an individual, but the person realizing the capital gain upon disposal of these securities or shares is a non-resident legal entity or individual, the obligation to calculate, to withhold and to pay the capital gain tax upon disposal of these securities or shares lays with the purchaser, meaning the non-resident legal entity or individual, directly or indirectly through its/his/her fiscal representative or duly empowered person in charge must fulfil fiscal and declarative obligations;
- In case of disposal of securities or ownership interest between two non-residents, provisions set by Titles II and III of the Fiscal Code apply regarding obligations to calculate, withhold and pay tax in case the person who makes the capital gain on disposal of securities or shares has not presented its/his/her tax residence certificate or in case Romania has not concluded a Double Taxation Treaty (DTT) with the State where the person who earns the capital gain is resident or in case as per DTT, Romania is entitled to tax the gain;
- In cases where disposal of securities occurred through an intermediary, the obligation to calculate and pay tax on capital gain brought about by the transaction lays with the non-resident individual.

VAT

Persons carrying out dependent activity as defined by article 7 of the Fiscal Code do not act independently in the meaning of a taxable person from a VAT point of view.

Local taxes

Clarification is provided regarding computation of tax on buildings that the taxpayer who owns several properties is liable for. The format of the "Special tax declaration" to determine tax surcharge on buildings owned by individuals is approved.

IMPACT OF THE PROVISIONS OF EMERGENCY GOVERNMENT ORDINANCE 58/2010 AND IMPLEMENTATION NORMS ON SOCIAL AND FISCAL LEGISLATION

New legal framework

Income from independent activities represents:

- Commercial income**
 - o Revenue from acts of commerce can be obtained from manufacturing activities, purchase for resale, organisation of cultural, sports, entertainment events, intermediary in the conclusion of commercial transactions (commissions contract, agent contract, representation contract, insurance agent agreement, as per Code of Commerce), sale under consignment regime, publishing, printing, repro-

- o producing activities, as well as transport of goods or persons;
- o Provision of services;
- o Practice of a craft.

Criteria which define in principal the **existence of an independent activity** are:

- o free choice in the performance of activities, of business hours and of location where activities are carried out;
- o risk assumed by the entrepreneur;
- o activity is carried out for several clients;
- o activity can be carried out not only directly but also with or by staff hired by the entrepreneur in the conditions of the law.

- Income from professions** is generated by the provision of services with a professional feature, rendered individually or under various forms of association in the scientific, literary, artistic, educational or other fields by physicians, lawyers, public notaries, attorneys, technical or accounting experts, chartered accountants, securities investment consultants, financial auditors, tax consultants, architects, translators, athletes, referees as well as persons carrying out independent regulated occupations as per law.
- Income derived from intellectual property rights** irrespective of their form are revenue from patents, designs and models, samples, trademarks, commercial logos, technical processes, know-how, authors' rights as well as similar rights.

Any activity will **qualify** as **dependent activity** if at least one of the following criteria is met:

- a) the income beneficiary is in a relationship of subordination to the entity which pays said income or to management bodies of the income payor. The beneficiary also respects working conditions imposed by the income payor, such as his/her duties and modalities to fulfil them, location where activity is carried out, business hours;
- b) while carrying out activity, the income beneficiary uses the income payor's material endowments, meaning its premises with related equipment, its work or safety equipment, its work tools and other items of similar nature;
- c) the income beneficiary contributes with his/her own physical or intellectual work but not with his/her own capital;
- d) the income payor supports, to achieve performance of the activity, business trip expenses of the income beneficiary, such as travel allowances in Romania and abroad as well as other expenses of a similar nature;
- e) the income payor supports all expenses for vacation or sickness of the income beneficiary;
- f) any other factor which reflects the dependent nature of the activity.

In case of requalification of an activity to a dependent activity, income tax as well as mandatory social contributions as per law will be reassessed and paid, the income payor and the income beneficiary being jointly responsible for their settlement.

Under these circumstances, regulations for determination of income tax are those applicable to income derived in addition to the main occupation.

Activities carried out in an independent manner which generate profession income as well as author's rights cannot be requalified as dependent activities.

Professional income

Professional income is income obtained by any individual from any other activity other than that defined as dependent when the activity is carried out outside an employment relationship.

The following are not professional income:

- o Rental income;
- o Income from investments;
- o Pensions;
- o Income from agricultural activities;

- o Prizes and gambling gains;
- o Capital gain tax on disposal of property;
- o Other income:
 - Insurance premiums supported by an independent individual or by any other entity in the course of activities for an individual with whom the person who supports the premiums is in a business relation but the relationship does not generate salary income;
 - Redemption received from insurance companies further to an insurance contract concluded between the parties;
 - Income under the form of price differences on some items, services and other rights received by retired persons, former employees as per labour contracts or special legal dispositions;
 - Fees for commercial arbitration received by individuals;
 - Income from other sources is any other income identified as being taxable income.

Individuals insured under other regimes which are not part of the public pension regime as well as individuals who are qualified retired persons in the public pension regime do not fall under the incidence of the provisions of OUG 58/2010.

Social contributions

- ☑ Income paid in respect of a dependent activity is treated by the income payor as salary income with, however, the following issues:
 - o The income payor must draft a statement of payment separately from the statement of payment prepared for employees under labour contract.
 - o This separate statement of payment disclosing payments made to dependent persons is not submitted to the Labour Inspectorate ("ITM");
 - o Commission to ITM (0.25% or 0.75%) as well as contribution to fund to guarantee payment of salary liabilities (0.25%) is not owed by the income payor upon the amounts paid in respect of a dependent activity to a person who is not an employee;
 - o The amounts paid in respect of a dependent activity is added to gross payroll expenses upon determination of enterprise contributions (except for the 2 above mentioned taxes) and determination of total individual contributions;
 - o In the list of insured persons declared to social security (CAS, *pension*), to unemployment Fund and to Fund for health insurance, the dependent individual's name, his/her personal numerical code, gross earnings and individual contribution are disclosed individual by individual to whom income is paid in respect of a dependent activity;
 - o Regulations applicable for determination of income tax are those applicable to income derived in addition to the main occupation.
- ☑ **Any professional income** is subject to individual contributions to social security (*pension*), to health insurance and to unemployment insurance. **The obligation to declare, calculate, withhold and settle contributions lays with the individual who receives the income** as per provisions of Implementation Norms of article III of Emergency Government Ordinance 58/2010.
- ☑ A distinction is made between the obligations made to persons who only obtain professional income with a repetitive feature and obligations made to persons who obtain income both professional and salary income:
 - o Persons who only obtain professional income with a repetitive feature - monthly, quarterly or semi-annually – or occasionally are subject to individual contributions to social security (*pension*), to unemployment insurance and to health insurance.
 - o Persons who in addition to their salary income obtain professional income with a repetitive feature - monthly, quarterly, semi-annually – are also subject to individual contributions also upon their professional income.
 - o Persons who in addition to their salary income, obtain professional income occasionally are not liable for individual contributions from their occasional professional income.
- ☑ The base upon which individual contributions to social security (*pension*), to unemployment insurance are calculated is as follows:
 - o Net monthly income capped at 5 average monthly gross salaries (1,836 RON x 5) for professional income with a repetitive feature - monthly, quarterly or for half a semi-annually;
 - o Net annual income capped at 5 average monthly gross salaries (1,836 RON x 5) for occasional professional income.
- ☑ The base upon which individual contributions to health insurance is calculated monthly is the net amount of professional income obtained during the month, the amount determined as the difference between gross income and deductible expenses to obtain professional income but with a upper limit of 5 average monthly gross salaries (1,836 RON x 5) and a lower limit of 1 minimum monthly gross salary (600 RON) if it represents for the individual the sole income upon which contribution to health insurance is calculated.
- ☑ The declarative obligations regarding individual contributions (CAS-*pension*, unemployment, CASS-*health*) are as follows:
 - o Persons who obtain professional income must submit:
 - Insurance statement with CAS (*pension*) which is considered a contract;
 - Insurance statement with Employment Agency (*unemployment*) which is considered a contract;
 - Insurance contract with a Health House (*health*), a single time, by the 25th of the month in respect of the previous month when professional income was obtained;
 - o Statements regarding contributions to pension, unemployment and health must be updated within 14 business days in case of changes in the amount of professional income;
 - o Regarding months when no professional income is obtained, this circumstance must be declared with CAS (*pension*) and with the Employment Agency (*unemployment*);
 - o Persons who obtain occasional professional income submit insurance statements regarding pension, unemployment and health each time such professional income is obtained, by the 25th of the month in respect of professional income was obtained during the previous month.
- ☑ Breach of declarative obligations or provision of incomplete or inaccurate data is punished by fines between RON 200 and RON 5,000.
- ☑ Deadlines for payment of individual insurance contributions (CAS-*pension*, Employment Agency-*unemployment*, and CAS-*health*) are identical to deadlines for submission of statements.
- ☑ Periods for which individual contributions have been paid represent contribution periods in the public pension regime and other rights of social insurance as well as in the unemployment insurance regime.

Income tax

Salary income

- o The face value of luncheon vouchers, nursery vouchers and holiday vouchers granted as per law are included in salary income. The amount of luncheon vouchers, nursery vouchers and gift vouchers taken into account upon determination of tax on salary income is the face value. The respective income is taxed as salary income in the month when they were received.
- o Gift vouchers even if granted by the employer for the benefit of employees' underage children, for Easter, 1st June (*children's day*), Christmas and similar celebrations in other religions as well as gifts offered to female employees on 8 March up to the limit of 150 RON per gift per person are deemed benefits in kind.
- o Regarding amounts paid directly by the employee in his/her quality as contributor to an optional pension fund, upon determination of the taxable salary income, contributions to the optional pension fund which were paid represent a reduction in taxable income for the month when they were disbursed as per supporting documents issued by the optional pension fund, up to the limit of income obtained.
- o Income obtained from dependent activities further to the performance of activities in Romania by individuals who are residents in a State with whom Romania has not concluded a treaty to avoid double taxation (DTT) and which is paid by a resident or non-resident employer is taxable from the very first day of activity in Romania. Besides, **income obtained by individuals who do not have proof of their fiscal residence in a State with whom Romania has concluded a DTT is taxable from the very first day of dependent activity in Romania.**
- o With respect to the application of provisions of a DTT concluded between Romania and another State, income from dependent activities obtained by non-resident individuals who carry out their activity in Romania is taxable if the individual is present in Romania one or several periods which exceed 183 days of any period of 12 consecutive months which ends in the calendar year in questions or in the period and conditions mentioned in the DTT but only if the individual has proved his/her fiscal residence in the State with whom Romania has concluded a DTT.
- o In respect of the application of provisions of a DTT concluded between Romania and another State, income from dependent activities obtained by non-resident individuals who carry out their activity in Romania and are present in Romania, a period of less than 183 days in any period of 12 consecutive months which ends in the calendar year in question or in the period and conditions mentioned in the DTT concluded between Romania and the other State is taxable in Romania if at least one of the following conditions is met:
 - the salary is paid by a resident employer or paid on behalf the employer's behalf;
 - the salary is supported by a permanent establishment that the non-resident employer has in Romania (salary income represents a tax deductible expense for permanent establishments in Romania).

Non taxable income

- o Compensation granted to disabled persons with a severe handicap is not taxable in case the employer cannot provide a personal assistant as per law.

Pensions

- o Amounts collected as per Law 411/2004 regarding privately administered pension funds and Law 204/2006 regarding optional pension funds represent pension in-

come. A non taxable threshold of RON 1,000 is assessed for each pension fund taken separately, depending of the frequency of collection (monthly or in instalments).

Income from independent activities

- o Income derived from activities carried out independently as regulated professions in the conditions of the law falls into the category of professional income, including when activity is carried out on the basis of contracts for commercial companies or other entities which are licensed as per law to carry out activities which generate professional income.
- o Associations which are not legal entities: individuals who obtain income from an activity performed under a form of organisation with legal identity subject to a fiscal transparency regime must treat such income as annual net income from independent activities.
- o Taxpayers who opted for final taxation of their income from independent activities for which the obligation to withhold income tax through advance payments exists are not obliged to submit a tax return (form 200).
- o Income for author's rights and related income defined by Law 8/1996 is deemed income from independent activities. Due to the change in the deduction rate applied to intellectual property rights for allowed expenses from 40% to 20% as at 1st July 2010, two net income figures will be calculated for 2010: a net income for the period from 1st January to 30 June 2010 and a net income for the period from 1st July to 31 December 2010. The sum of the 2 net incomes will represent annual net income.

ORDER 599 dated 9 August 2010 to approve the model of statement for individuals who obtain professional income other than salary income to declare their individual contribution to the unemployment insurance regime as article 2 point 2 of OUG 58/2010 to amend and complement Law 571/2003 – Code Fiscal and for other financial and fiscal measures makes it mandatory (MO 588/2010)

The model of statement to insure in the regime of unemployment insurance, individuals who obtain income from professional income other than salary income and who must pay an individual contribution to the unemployment insurance Budget as per article III point 2 of OUG 58/2005 is approved.

The declaration model is published, although some issues regarding changes introduced by OUG 58/2010 and HG 791/2010 are still to be clarified and such clarifications are expected in the coming months.

DECISION 768 dated 23 July 2010 to amend and complement Implementation Norms of Law 571/2003 – Fiscal Code, approved by Government Decision 44/2004 (Official Gazette 534/2010)

Amendments to Implementation Norms of the Fiscal Code entered in force on 30 July 2010.

Among the most important aspects, we mention:

VAT

New VAT rate

According with general provisions, the VAT rate is the rate in force at the date of supply of goods or provisions of services. When amounts were charged in advance for supply of goods made or provisions of services rendered after 1st July 2010, they must be adjusted to the new 24% VAT rate. The same treatment applies to invoices issued in case of supply of goods or provision of services for which the beneficiary is obliged to apply VAT through the reverse tax mechanism.

As exceptions to the general rule stated above, the 24% VAT rate applies to:

- EU acquisition of goods which were received during the

month of June 2010 but for which the supplier issued an invoice in July 2010;

- ☑ invoices issued further to changes in the price of operations which occurred before 1st July 2010 but only in case the base operation cannot be identified;
- ☑ payments charged back after 1st July 2010;
- ☑ invoices regarding services charged on the basis of work reports or activity reports, if the reports are issued by providers or, if applicable, accepted by the beneficiary after 1st July 2010, irrespective of the date when services were rendered, although billing must occur within 1 year;
- ☑ invoices for utilities (as well as gas, electricity, water) and for telecommunications issued after 1st July 2010;
- ☑ lease instalments where the due date is during the month of July 2010 as per the relevant instalment schedule;
- ☑ online services further to a subscription contract for which invoices are issued after 1st July 2010.

Commercial price reductions

Price reductions or the occurrence of any adjusting event as per article 138 of the Fiscal Code after 1st July 2010 induces application of the VAT rate in force at the date of the initial operation.

The adjusting event date is only used to determine the rate for a VAT adjustment in cases when the underlying operations cannot be identified.

For EU commercial reductions, the applicable VAT rate is the rate which applies at the date in which VAT on the EU acquisition was due.

Example: *Company A located in Romania has received an invoice for an advance payment regarding an EU acquisition of goods in the amount of Euro 1,000 issued on 12 May 2010. VAT related to the EU acquisition was determined using the exchange rate in force on 12 May 2010, i.e. 1 Euro = 4.18 RON and by applying 19% VAT, therefore:*

$1,000 \text{ Euro} \times 4.18 \text{ RON/Euro} \times 19\% = 794.20 \text{ RON}$.

In July, company A receives an invoice issued on 16 July 2010 for the difference up to the full amount due for goods which were purchased within the EU which represents an amount of Euro 5,000. The VAT related to the EU acquisition was determined using the exchange rate in force on 16 July 2010, i.e. 1 Euro = 4.26 RON and by applying a VAT rate of 24%, therefore:

$5,000 \text{ Euro} \times 4.26 \text{ RON/Euro} \times 24\% = 5,112 \text{ RON}$.

On 5 August 2010, the EU supplier issues a credit note by which it grants a price reduction of 10% for the EU supply of goods or services which has resulted in an EU acquisition by company A. The exchange rate in force at the date the event occurred is 4.28 RON/Euro. Company A must adjust the tax base of the acquisition to amounts determined as follows:

$1,000 \text{ Euro} \times 10\% \times 4.28 \text{ RON/Euro} \times 19\% = 81.32 \text{ RON}$

$5,000 \text{ Euro} \times 10\% \times 4.28 \text{ RON/Euro} \times 24\% = 513.60 \text{ RON}$.

It is only when it is not possible to identify which EU acquisition the adjustment applies to that the applicable VAT rate is the rate in force at the date of the adjusting event.

Agent regime/chargeback of outlays incurred for a third party

Upon application of the agent regime, the generating event for chargeback operations occurs at the issue date of the invoice paid by a legal entity incurred on behalf of another legal entities or individuals.

Example: *Company A located in France dispatches employees in Romania to negotiate contracts with business relations in Romania. According to agreements between the parties, invoices for accommodation, local transport and other outlays incurred by the French employees will be issued to and paid by the Romanian business entity which will subsequently recover amounts disbursed by charging them back to company A locat-*

ed in France. For each outlay to be charged back, the location where services were provided will be considered first. If the location is in Romania, the chargeback will be made using the same regime which the provider of these services applied. Therefore, accommodation services were rendered in Romania, where the immovable item is located [article 133 point 4) letter a) of the Fiscal Code] and will be charged back using the reduced 9% VAT rate. Local transport occurring in Romania, where it was effectively rendered [article 133 point 4) letter b) of the Fiscal Code] will be charged back by applying the normal 24% VAT rate. Under the assumption that the invoice for transport would have been issued in June 2010 with a 19% VAT rate and chargeback would occur in July 2010, the VAT rate applicable to the taxable entity in Romania would be 24%. Upon application of the agent regime, the generating event for chargeback operations occurs at the issue date of the invoice by the legal entity which charges back outlays incurred on behalf of other legal entities.

Adjustment of VAT rate where taxable base is denominated in foreign currency

Guidance is provided regarding the modality for VAT rate adjustments for advance payments collected prior to 1st July 2010 for supplies made after 1st July 2010 where the taxable base is denominated in foreign currency:

- a) to determine the taxable base, 2 exchange rates will be used: for the part which represents the advance payment, the exchange rate prevailing when the advance payment was recorded will be retained. For the unpaid balance up to the full value of the transaction, the exchange rate prevailing at the date of supply will be used;
- b) to determine VAT, the VAT rate in force at delivery/supply date will be applied to the taxable base determined as mentioned above.

Another example: *Company A collects an advance payment of Euro 2,000 from its client B in June 2010, for a delivery of equipment within Romania. The delivery occurs during the month of July and the purchase price is Euro 6,000. Company A issues an invoice for an advance payment of Euro 2,000 to B at the exchange rate of 4.1 RON/Euro, prevailing at the date the advance payment is collected in June.*

Advance payment taxable base = 2,000 Euro x 4.1 RON/Euro = 8,200 RON.

VAT related to the advance payment = 8,200 RON x 19% = 1,558 RON.

In July, at the delivery date of the equipment, the previously charged advance payment is written off and VAT is adjusted further to modification of the standard VAT rate as at 1st July 2010. The exchange rate in force at delivery date of the equipment is 4.3 RON/Euro.

The adjustments made including the VAT rate adjustment are as follows:

- ☑ Write off of the advance payment, including its related VAT, i.e. 8,200 RON and 1,558 RON.

- ☑ Taxable base of the supply: [(2,000 Euro x 4.1 RON/Euro) + (4,000 Euro x 4.3 RON/Euro)] = 25,400 RON.

TVA related to the supply: 25,400 RON x 24% = 6,096 RON.

In case of EU acquisitions of goods, adjustments are not made in case of changes in the VAT rate, meaning modification of the VAT rate prevailing at the date of the generating event, the applicable rate being the one prevailing at the date when VAT chargeability occurs.

Other VAT rate adjustment examples

Example 1: *A building contractor prepares a work report during the month of June for work realized during May and June. The contract states that work reports must be accepted by the beneficiary. The beneficiary accepts the work report in July 2010. The VAT generating event, meaning the date when the service*

is considered rendered, occurs at the date of acceptance of the work report as per provisions of article 134¹ point 7) of the Fiscal Code. Subsequently, the VAT rate applicable to the full amount for services accepted by the beneficiary is 24%, the rate in force at the date of the generating event for VAT. If, prior to the issue of the work report, invoices for advance payment were issued with a 19% VAT rate, the respective advance payments are adjusted after 1st July 2010 by applying the 24% VAT rate.

Example 2: A leasing company has concluded financial lease contracts with lessees for automobiles, disclosing a calendar for payment of lease instalments. With respect to a lease instalment which is due in June 2010, a 19% VAT rate will apply. The 24% VAT rate applies for a lease instalment with a payment due date in July 2010. If the leasing company issues an invoice for a lease instalment in advance considering the due date for payment of the instalment stated in the contract, this invoice will be considered an invoice for advance payment. Subsequently, an adjustment of the invoice for advance payment will be made in accordance with provisions of article 140 point 4) of the Fiscal Code.

Example 3: A tax consultant firm provides tax consultancy services for which it provides activity reports. As per contract, it is not necessary to receive acceptance of the activity report by the client. The VAT generating event is therefore the issue date of the activity report. If the tax consultant firm has rendered tax consultancy services in May and June 2010 for which an activity report was issued in July 2010, the invoice will be issued applying a 19% VAT rate, the deadline for invoice issuance being 15 July 2010 as per article 155 point 1) of the Fiscal Code. Be aware that, in accordance with article 134², VAT chargeability upon supply of goods and provision of services within Romania occurs at the date of the generating event (meaning at the time of supply of goods or provision of services). In the example above, VAT chargeability occurs in May even if the invoice itself can be issued up until 15 July in accordance with article 155 point 1).

Example 4: A company supplies, upon subscription, online magazines in which the client has access to the magazine for the duration of its subscription period. In June 2010, the company invoices subscriptions for a period of 6 months, applying a 19% VAT rate. The VAT generating event occurs at the issue date of the invoice in which the right of access to the online magazine is granted.

Example 5: A company registered under the scope of VAT receives goods during the month of June which were shipped from Hungary to Romania. Until 15 July 2010, the company does not receive the invoice afferent to the items received in June 2010 and subsequently the Romanian company will issue an invoice to itself on 15 July 2010 as per provisions of article 155¹ point 1) of the Fiscal Code, applying a 24% VAT rate to the invoice. The EU acquisition of goods is declared on the VAT return and on the recapitulative statement afferent to the month of July 2010. In August 2010, the company receives the invoice issued by the supplier bearing an issue date 10 June 2010. Although this invoice has a date prior to 15 July 2010, VAT chargeability occurs at the date the invoice is issued. Subsequently, in August 2010, the company will disclose under the « adjustments » caption of the VAT return the exchange rate differences between the exchange rate prevailing at the issue date of the invoice issued to itself and the exchange rate in force at the issue date of the invoice issued by the supplier for the purpose of declaring the EU acquisition of goods at the exchange rate in force at the date of VAT chargeability. Furthermore, the company will adjust the VAT rate afferent to this EU acquisition, meaning application of the 19% VAT rate. Regarding the Recapitulative statement set per article 156⁴ of the Fiscal Code, the company will adjust both the July 2010 reca-

pitulative statement to exclude the EU acquisition of goods and June 2010 recapitulative statement to include the EU acquisition of goods.

EU OPERATORS' REGISTRY

To register with the EU Operators' Registry ("R.O.I.):

- ☑ Limited companies ("S.R.L.") and limited partnership with their registered headquarters in Romania submit criminal records for their Directors and shareholders;
- ☑ Public limited company including partnership limited by shares with their registered headquarters in Romania only submit criminal record of their Directors and not shareholder criminal records;
- ☑ Public institutions and non-resident entities only submit the standard application (form 095). The Norms state that a criminal record is not required when registering with the ROI for legal entities which are not set up under the provisions of Law 31/1990 regarding commercial companies. Besides, **the criminal record is not required for registering within ROI for persons that are not established in Romania but have a registration code in the scope of VAT in Romania.**

ORDER 2221 dated 23 July 2010 to amend Appendix 1 of ANAF President Order 2101/2010 to approve Organisation and Operation Procedures of EU Operators' Registry as well as to approve form and content of forms (Official Gazette 527/2010)

The Order introduces the following amendments:

- ☑ In case the criminal record discloses penal action in progress against any of the shareholders or Director, the taxpayer must present documents issued by the authority in charge from which it results that the penal suit is or is not related to EU operations;
- ☑ In case the criminal record discloses infringements and/or other data, the taxpayer will present legalized copies of judicial decisions which punish such infringements as well as document issued by the legal department with the general inspectorate of public finance which coordinates the tax authority in charge or, if applicable within ANAF for large taxpayers from which it results that the penal case is or is not related to EU operations.

INFORMATION – CONSEQUENCES OF FAILURE TO REGISTER WITH EU OPERATORS' REGISTRY ("R.O.I")

- ☑ EU Acquisitions with an invalid VAT code:
- ☑ The Romanian entity is unable to communicate a valid VAT code, circumstances which trigger being charged VAT by the EU supplier at the VAT rate of the State where the supplier is registered under the scope of VAT.
- ☑ The Romanian VAT is treated as a with an entity not registered under the scope of VAT for this EU transaction and has the obligation to submit a special VAT return for VAT non payers (form 301) set as per article 1563 point 1) of the Fiscal Code. The Romanian entity **effectively disburses** VAT afferent to the EU acquisition as reported in the special VAT return **to the Romanian State Budget.**
- ☑ In case of disbursement of VAT which was reported on the special VAT return, this VAT cannot be recovered by deduction from VAT collected from other operations due to the fact that VAT code for the operation is invalid.
- ☑ Regarding VAT Information Exchange System (VIES) reporting, the EU supplier will report the operation even if its Romanian client is not in a position to report it.

Conclusion: If a company registered under the scope of VAT carries out EU acquisitions, but did not register with ROI, the right to a reverse tax deduction is lost. VAT is disbursed to the Romanian State Budget and cannot be recovered.

EU supplies with an invalid VAT code:

- In such circumstances, the deduction right upon acquisition of goods is lost as a consequence of provisions of article 145 of the Fiscal Code which states that any legal entity has the right to deduct VAT if these goods are used for taxable operations or for VAT exempted EU supplies in accordance with article 143 of the Fiscal Code.
- Subsequently, the entity must adjust VAT on acquisitions; that is, pay it to the State Budget.

Conclusion: In case of performance of EU supply by a company registered under the scope of VAT which failed to register with ROI, the deduction right on acquisitions of goods and services is lost.

ORDER to amend Appendix 3 of Public Finance Ministry Order and of Justice Ministry Order 1706/1889/C/2008 to approve procedures for determination, payment and adjustment of tax on capital gain on disposal of personal real estate and the model and content of forms set at title III of Law 571/2003 – Fiscal Code (Official Gazette 533/2010)

The Procedure to declare and pay capital gain tax on disposal of personal real estate is approved. Capital gain taxes on disposal of personal real estate is declared by the public notaries as a collection for the State Budget on a monthly basis, by the 25th of the month subsequent to the month when it was calculated and collected as per law. Declaration of the capital gain tax on disposal of personal real estate is made by submitting form 100 "State Budget liabilities return".

INSTRUCTION 25 dated 2 August 2010 regarding the reference interest rate of the National Bank of Romania (NBR) for the month of August 2010 (Official Gazette 538/2010)

For the month of August 2010, the NBR reference interest rate is 6.25% per annum.

ORDER 1444 dated 13 August 2010 to set the indexed face value of a luncheon voucher for the second half of 2010 (Official Gazette 596/2010)

For the second half of 2010, starting September, the value of a luncheon voucher remains RON 8.72. We remind that as per OUG 58/2010, luncheon vouchers are subject to income tax.

ORDER 2289 dated 5 August 2010 to approve Procedures for issue and communication of administrative resolutions to debtors with outstanding fiscal liabilities below a certain amount (Official Gazette 573/2010)

Fiscal liabilities for an amount less to RON 10 which are outstanding as at 31 December are written off tax authority books within the first 7 days of the subsequent year. Outstanding fiscal liabilities represent liabilities due by a debtor and not settled. Resolutions regarding additional obligations, injunctions for payment and enforceable titles will be issued after application of the write off set in this Order.

ORDER 2160 dated 17 August to approve methodological Norms to process preliminary complaints lodged against minutes of financial inspection drafted as per Law 30/1991 regarding organisation and operation of financial control and Financial Guard (Official Gazette 593/2010)

ORDER 2258 dated 2 August 2010 to approve amendment of ANAF President Order to approve Procedures to declare inactive taxpayers (Official Gazette 552/2010)

ORDER 2086 dated 6 August 2010 to approve the Norms regarding deductions for research and development expenses upon determination of taxable profit (Office Gazette 573/2010)

On 1st January 2009, as per OUG 200/2008, article 191 of the Fiscal Code, the following incentives to research and development activities upon determination of taxable profit entered into force:

- Additional deduction up to 20% of the eligible expenses for these activities upon determination of taxable profit;
- Application of accelerated depreciation method extended to devices and equipment aimed to be used for research & development activities.

Law 343/2009 sets that implementation regulations of these provisions will be introduced by an Order by the Ministry of Public Finance and the Ministry of Education, Research and Innovation are to be published. It is actually this ANAF Order 2086/2010 which establishes the eligible expenses to be granted deductions and defines the concepts of research and development, of valuation and also provides examples of activities which cannot be considered research & development activities.

ORDER 6693 dated 27 July 2010 to approve technical Norms for use of Romanian Customs Declarations Processing System - RCDPS for customs import statements (Official Gazette 528/2010)

ORDER 9 dated 16 July 2010 for application of International Financial Reporting Standards for banking and for the preparation of stand alone annual financial statements starting financial year 2012 (Official Gazette 535/2010)

Provisions of the Order apply to the following banking institutions:

- banks, Romanian legal entities;
- credit cooperatives;
- savings banks and banks specialized in loans in the rental field;
- banks specialized mortgage loans;
- branches in Romania of foreign banking institutions;
- branches located abroad of banking institutions which are legal Romanian entities.

Starting 1st January 2012, banking institutions will keep their books in accordance with the provisions and the treatments of the International Financial Reporting Standards (IFRS).

REMINDER – Ecotax is to declare and pay quarterly

As per provisions of Law 167 dated 14 July 2010 regarding the Environment Fund (Official Gazette 504/2010) which was mentioned in APEX Team newsletter no. 7_2010, we remind that starting the month of July, the ecotax applied for packaging bags (0.1 RON each) which are not biodegradable for buyers is **declared and paid quarterly**.

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 August 2010:

1 Euro = 4.2597 RON; 1 USD = 3.3582 RON;
1 CHF = 3.2958 RON; 1 GBP = 5.1793 RON.

SEPTEMBER 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 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 as per article 8 point 7¹ of the Fiscal Code
- 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 September 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 Wednesday 1st September is the last day to pay:**

- Tax on agricultural revenue – on a normative basis (Instalment I)

That Tuesday 7 September last day to submit

- Form 092 (amendments) to change VAT return periods from Quarterly to Monthly for EU acquisitions of goods in August 2010. Starting September, the VAT return will be submitted monthly. The period July-August will represent a distinct fiscal period for which a VAT return will be submitted, and is due by 27 September 2010.

That Friday 10 September is the last day to submit

- Return on collection of hotel tax

That Friday 10 September is the last day to pay

- Hotel tax
- Advertising service tax

That Wednesday 15 September is the last day to submit

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

That Wednesday 15 September is the last day to pay:

- Income tax on income from independent activities (Instalment III)
- Income tax on rentals, except rentals of agricultural land (Instalment III)
- Tax on agricultural revenue – on an effective basis (Instalment III)
- Tax on advertising billboards (instalment III)

That Monday 27 September 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 (except Ecotax).

That Monday 27 September 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 (except Ecotax)
- Gambling tax.

That Thursday 30 September is the last day to submit

- Application for VAT refund for taxable persons established in Romania as per article 147² point 2) of the Fiscal Code (form 318)
- Application for VAT refund for taxable persons who are not registered in the scope of VAT in Romania and are established outside CEE (form 313).

That Thursday 30 September is the last day to pay:

- Local taxes on land, construction and means of transport (Instalment II and final for 2010).

IMPORTANT

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 or from the ANAF website: www.anaf.ro. 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.

KEY HR FIGURES

2010 Contribution (based on the gross income)	Employer and Beneficiary of activities considered dependent activities (%rate)	Employee and provider of dependent activities (%rate)
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% (only for employees under labour contract)	
Health insurance fund	5.2%	5.5%
Labour office commission ("ITM" commission)	0.25% or 0.75% (only for employees under labour contract)	
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 subject to income tax starting July 2010	RON 8.72	
Average monthly gross salary (INSSE June 2010)	RON 1,951	
Per diem (in Romania) Employees in the public sector Employees in the private sector (x 2.5)	RON 13.00 RON 32.50	

Note 1: Income paid to a person who carried out an activity considered dependent activity (example: in-house "captive" PFA, civil contracts) are disclosed on a separate "Payment statement" which is not submitted to ITM but is included in all the payroll returns except the return regarding ITM commission.

Contributions starting July 2010 (based on net income defined as gross income less deductible expenses but capped at 5 average monthly gross salaries, i.e. RON 1,836 x 5)	Beneficiary of independent or professional activities (including Directors receiving remuneration further to a GSM resolution) (% rate)	Provider of independent or professional activities (including Directors who receiving remuneration further to a GSM resolution) (% rate)
Contribution to social insurance (<i>pension</i>)	0%	10.5%
Contribution to unemployment insurance	0%	0.5%
Contribution to health insurance	0% *	5.5%
Income tax		16%

Note 2: The provider of independent or professional services or the Director who receives remuneration further to a GSM resolution has the obligation to submit a statement to CAS (pension), a statement to the Employment Agency (unemployment) and a statement to one Health House on a monthly basis and pay his/her contributions if the activity is monthly.

*: regarding remuneration to the Director, the health contribution (5.2%) has not yet been confirmed by the National Health Institution ("CNASS").

Contributions starting July 2010 (based on net income defined as gross income less deduction of 20% of gross income but capped at 5 average monthly gross salaries, i.e. RON 1,836 x 5)	Beneficiary of authors activities (rate %)	Author (rate %)
Contribution to social insurance (<i>pension</i>)	0%	10,5%
Contribution to unemployment insurance	0%	0,5%
Contribution to health insurance	0%	5,5%
Income tax		16%

Note 3: An author has the obligation to submit a statement to CAS (pension), a statement to the Employment Agency (unemployment) and a statement to one Health House on a monthly basis and pay his/her contributions if the author's rights are received monthly. Regarding income tax, it remains possible for the author to have 10% of his/her income tax withheld when author's rights are paid, annually declare author's rights obtained, adjust the 10% income tax rate to 16% and pay the balance due.



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 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**



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.