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## Dear clients, business partners and readers of APEX Team newsletters

In November, APEX Team celebrates its 7<sup>th</sup> anniversary! We are pleased to have spent 7 years demonstrating professionalism and dedication to clients.

A single sentence could also depict our organisation: "From the beginning, there was a team moving in the same direction, which has been decisive because achievement is built together..."

We wish to thank all for whom we have worked or cooperated with and to assure them that we shall remain a trusted partner.

Incidentally, APEX Team received a prize from the Romanian Body of Chartered Accountants (CECCAR) on 22 October. We are very glad and proud of this recognition by our peers.



## ORDER 2604 dated 3 October 2011 regarding implementation of provisions of article XI of Government Ordinance 30/2011 to amend and complement Law 571/2003 – Fiscal Code and establish financial and fiscal provisions (Official Gazette 707/2011)

This Order clarifies the modalities for cancellation or reduction of penalties on past due fiscal liabilities as at 31 August 2011, modalities introduced by OG 30/2011 and presented in APEX Team newsletter no. 9\_2011.

To avoid any confusion, it is worth mentioning that until 30 June 2010, the present interest rate for late payment was named "additional charge for late payment" and represented a percentage of interest (extra charge) applied to each day of delay in settlement. Late payment penalties were introduced starting 1<sup>st</sup> July 2010 and represent a one-time 5% penalty upon the amount which remains unsettled 30 days after its due date or a percentage of 15% if the delay exceeds 90 days.

The following facilities are granted for additional fiscal liabilities pertaining to the principal balance (tax liability excluding interest and penalties) of past due fiscal liabilities as at 31 August 2011:

- a) if principal balance of fiscal liabilities as well as related interest are settled on a voluntary basis or by netting prior to 31 December 2011, late payment penalties are cancelled as well as 50% of the additional charge for late payment pertaining to these fiscal liabilities;
- b) if principal balance of fiscal liabilities as well as related interest are settled on a voluntary basis or by netting prior to 30 June 2012, late payment penalties are reduced by 50%, and 50% of the additional charge for late payment pertaining to these fiscal liabilities are reduced by 50%.

Regarding interest due through settlement date and established by a decision issued by tax authorities after settlement, the condition is considered to have been met if additional interest charge for late payment is settled by the due date defined as follows:

- if communication date is between 1<sup>st</sup> and 15<sup>th</sup> of the month, due date for payment is 5<sup>th</sup> of the next month;
- if communication date is between 16<sup>th</sup> and 31<sup>st</sup> of the month, due date for payment is 20<sup>th</sup> of the next month.

The principal balance of past due fiscal liabilities as at 31 August 2011 means fiscal liabilities disclosed on tax returns submitted by the taxpayer through 31 August 2011 and/or taxation decisions issued and communicated to the taxpayer through this date.

### Observations

Settlement of fiscal liabilities and additional fiscal liabilities (interest and penalties) is by application of payments to the earliest unpaid balance. This method has been amended by OG 29/2011 in the sense that fiscal liabilities in principal by aged due date are settled first followed by additional fiscal liabilities by aging date. The outcome is that in practice, to be in a position to settle the liability and additional liability, all liabilities must be settled.

Due to the fact that tax authority decisions regarding the most recent additional liability is issued after submission of the application for facilities to reduce specific interest and penalties, and the most re-

cent additional liability must also have been settled, the result is that all liabilities in principal and additional liabilities which could exist prior to issue of the decision must have been settled.

**Example**

RON 10,000 of tax on profit was due 25 April 2010 as disclosed in form 101 submitted on the same date. This amount was not settled and has triggered as at 30.09.2011 additional fiscal liabilities which were determined as follows:

- for the 26.04.2010 to 30.06.2010 period, the additional interest charge for delay in payment is 0.1% per day, i.e. RON 660, which is communicated to the taxpayer on 30.06.2010;
- for the 01.07.2010 to 30.09.2010 period, interest is 0.05% per day, i.e. RON 460, which is communicated to the taxpayer on 30.09.2010;
- for the 01.10.2010 to 30.09.2011 period, interest is 0.04% per day, i.e. RON 1,460, and communicated to the taxpayer on 30.09.2011;
- late payment penalties of 15%, i.e. RON 1,500 RON, are communicated to the taxpayer on 30.09.2011.

The facility the taxpayer can benefit from is the cancellation of late payment penalties in the amount of RON 1,500 as well as 50% of the amount of additional charge for delay in payment for the 26.04.2010 to 30.06.2010 period, i.e. RON 330. Thus, the total amount of the facility is RON 1,830. To be in a position to benefit from the facility, the taxpayer must settle the remaining liabilities, specifically, the liability of RON 10,000, the interest charge for delay of RON 330 and additional interest of RON 1,920 (according to the second and third bullet above).

Let us suppose that the taxpayer also has a liability towards the State Budget of RON 15,000 representing income tax withheld from its employees which was due on 25 September 2011 and that additional fiscal liabilities have not yet been calculated.

The position of the taxpayer in tax authority records is therefore as follows:

Date	Type	Amount		
		Due	Temporarily suspended	Settled
25.04.2010	Liability	10,000		
30.06.2010	Additional charge	660		
30.09.2010	Interest	460		
30.09.2011	Interest	1,460		
25.09.2011	Liability	15,000		
30.09.2011	Penalties	1,500		

Let us now suppose that the taxpayer submits an application for facilities to cancel or reduce late payment penalties on 17 October 2011, and tax authorities inform the taxpayer of temporary removal of the RON 330 additional charge as well as the RON 1,500 late payment penalty from balances due the State. On 20 October 2011, the taxpayer pays RON 12,250 RON, which will settle the RON 10,000 principal balance, the additional charge for delay of RON 330 and interest of RON 1,920.

On 22 October 2011, tax authorities issue a decision regarding the calculation of the most recent additional liabilities pertaining to the liability in principal of RON 10,000 due on 25 April 2010, interest for the period from 01.10.2011 to 20.10.2011 being in amount of RON 80 RON. Also on 22 October, the decision regarding calculation of additional liabilities is communicated to the taxpayer.

To date, the position of the taxpayer according to tax authority records is therefore as follows:

Date	Type	Amount			
		Due	Temporarily suspended	Settled	Balance
25.04.2010	Liability	10,000	-	10,000	-
30.06.2010	Additional charge	660	330	330	-
30.09.2010	Interest	460	-	460	-
30.09.2011	Interest	1,460	-	1,460	-
25.09.2011	Liability	15,000	-	-	15,000
30.09.2011	Penalties	-	1,500	-	1,500
20.10.2011	Interest	80	-	-	80

Subsequently, to be in a position to settle interest of RON 80, the taxpayer must first settle the liability of RON 15,000. Furthermore, payment of this additional interest charge for delay in payment must be made by 20 November 2011; otherwise, conditions for approval of the facilities will not be met.

**ORDER 3253 dated 7 October 2011 to approve templates of forms issued for implementation of provisions of article XI of the Government Ordinance 30/2011 to amend and complement Law 571/2003 – Fiscal Code and establish financial and fiscal provisions (Official Gazette 713/2011)**

The Order approves 2 forms to apply measures regarding cancellation/reduction of late payment penalties which were introduced by OG 30/2011 and presented in APEX Team newsletter no. 9\_2011:

- decision of cancellation of late payment and interest penalties;
- decision of reduction late payment and interest penalties.

These forms are used by tax authorities to approve cancellation or reduction of late payment penalties which are granted as per the provisions of OG 30/2011.



**To benefit from facilities, all fiscal liabilities and previous additional fiscal liabilities must be previously settled**



**ORDER 2618 dated 6 October 2011 to amend and complement OMFP 752/2006 to approve issuance procedures for tax certificates to legal entities and individuals, certificates regarding liabilities towards the State Budget as well as their model and content (Official Gazette 712/2011)**

Among the amendments, we mention:

- regarding taxpayers which set up secondary establishments which are fiscally registered as payers of salaries or income assimilated to salaries, the tax certificate is issued upon taxpayer request and includes taxpayer unsettled fiscal obligations as well as secondary establishment obligations;
- the introduction of the possibility to disclose certain, liquid and due receivables the taxpayer must collect from contracting authorities on the tax certificate defined as per OUG 34/2006 regarding attribution of contracts of public procurement, concession contracts for public works and concession contracts for provision of services. This amendment had already been introduced by OG 29/2011 in the Code of Fiscal Procedure (see APEX Team newsletter no. 9\_2011).

**ORDER 3162 dated 20 September 2011 to amend ANAF Presidential Order 76/2010 to approve model and content of form (390 VIES) "Recapitulative statement of EU supplies/acquisitions/services" (Official Gazette 677/2011)**

Due to amendments introduced into the Fiscal Code by OG 30/2011 (see APEX Team newsletter no. 9\_2011), the Order updates the due date for submission of form 390 which is postponed from the 15<sup>th</sup> to 25<sup>th</sup> of the subsequent month.

In addition, amendments and complements are introduced for administration and processing 390 statements by ANAF.

**ORDER 3193 dated 27 September 2011 to approve the model and content of forms, "Certificate to attest settlement of VAT in case of EU acquisition of means of transport" and "Certificate" as well as the procedure for issuance (Official Gazette 698/2011)**

The Order approves the 2 forms mentioned in its title as well as the procedure for issuing them.

The Order abrogates provisions of ANAF Presidential Order 1128/2009 regarding the same forms.

We remind that these forms are necessary for registration of new or second-hand means of transport with provenance of other EU State members.

The first form is issued in case VAT due to the State Budget was settled and the means of transport can subsequently be registered. The second form applies to cases where VAT is not due with respect to the respective acquisition.

**ORDER 3194 dated 27 September 2011 to approve the model and content of form (307), "Statement of amounts resulting from VAT adjustment in cases where the beneficiary of the asset transfer or the lessee/user of tangible fixed assets purchased through a lease contract is not a registered person under the scope of VAT" as well as modalities to settle these amounts (Official Gazette 698/2011)**

The Order approves the model and content of form 307 mentioned above.

The amount of VAT to pay to the State Budget further to adjustment as per articles 128 point (4), 148, 149 or 161 of the Fiscal Code will be settled by the asset purchaser or the lessee/user of the tangible fixed asset purchased through a lease contract, as the case may be, to the State Budget in accordance with legal provisions in force, in RON, cash, bank transfer or postal remittance into account 20.10.01.01.05 "VAT to pay to the State Budget further to adjustments" opened at the State Treasury by tax authorities in charge and disclosing the tax registration number or the individual's personal numeric code as appropriate.

The former form 307 ruled by ANAF Presidential Order 2691/2010 is abrogated.

**ORDER 3261 dated 10 October 2011 to approve the model and content of form (011), "Registration form for entities which are subject to the quarterly contribution to finance expenditure in the field of health" (Official Gazette 727/2011)**

Form (011), "Registration form for entities which are subject to the quarterly contribution to finance expenditure in the field of health" is completed and submitted by:

- Romanian legal entities which hold authorisation to introduce medicine on the market;
- legal representatives designated as per provisions of OUG 77/2011 to establish a contribution to finance expenditures in the field of health by holders of authorisations to introduce medicine on the market which are not Romanian legal entities.

**INSTRUCTION 32 dated 30 September 2011 regarding the reference interest rate of the National Bank of Romania (NBR) (Official Gazette 695/2011)**

Starting 30 September 2011, the NBR reference interest rate is 6.25% per annum.

**ORDINANCE 30 dated 31 August 2011 to amend and complement Law 571/2003 – Fiscal Code and establish financial and fiscal provisions (Official Gazette 627/2011)**

As mentioned in APEX Team newsletter no. 9\_2011, we revert to OG 30/2011 to address the treatment of fiduciary contracts regarding profit tax, income tax and local taxes.




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**Tax certificate includes taxpayer liabilities for main and secondary establishments**

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## FIDUCIARY CONTRACTS

Fiduciary contracts are ruled by the Civil Code.

As per the Civil Code, a fiduciary is a legal operation by which one or several "founders" transfer real estate rights, rights to receivables, guarantees or other estate rights or an entirety of such rights, present or future to one or several trustees who administer them in a determined scope for the benefit of one or several beneficiaries. These rights compound a distinct estate which is separated from the other rights and obligations of the trustees.

The fiduciary contract is introduced starting 1<sup>st</sup> October 2011 in the new Civil Code and represents an adoption of the Anglo-Saxon concept of "trust" in Romanian legislation. The introduction of these new institutions, beyond their theoretical aspects, is important in practice by ruling the possibilities of sharing assets within an estate belonging to individuals or legal entities without mandatory set up of a new legal entity but with the advantages of limited liability.

Under sanction of invalidity, the fiduciary contract must mention:

- property rights, receivable rights, guarantees and any other estate right which are transferred;
- the transfer length which cannot exceed 33 years starting date of conclusion;
- identity of the founder(s);
- identity of the trustee(s);
- identity of the beneficiary or beneficiaries or at least the rules to enable their identification;
- object of the fiduciary contract and extent of powers of administration and on disposition of the trustee(s).

The founder of the trust can be any legal person or individual.

The quality of trustee can have: credit institutions, investment and administration of investment companies, financial investment service companies, legally established insurance and re-insurance companies, public notaries and attorneys in the form of carrying out duties of the profession.

The beneficiary of the trust can be the founder, the trustee or a third party.

## FISCAL TREATMENT OF FIDUCIARY CONTRACT

### PROFIT TAX

When the founder is the same person as the beneficiary,

- the transfer of the estate from the founder to the beneficiary does not represent a taxable transfer;
- the trustee will maintain separate books for the trust estate and will communicate a statement of income and expenditure which result from estate administration in accordance with the contract, to the founder on a quarterly basis;
- the fiscal value of the assets included in the trust estate taken over by the trustee is equal to the fiscal value it had for the founder;
- fiscal depreciation of any depreciable asset included in the trust estate continues to be determined in accordance with regulations set at article 24 of the Fiscal Code which would have been applicable to the taxpayer which transferred the asset if the transfer had not occurred.

When the quality of beneficiary is held by the trustee or a third person, the costs incurred further to the transfer of the trust estate from the founder to the trustee are deemed disallowed expenses.

### INCOME TAX

The transfer of the fiduciary estate from the founder to the trustee does not generate taxable income.

Remuneration of the trustee, public notary or attorney, collected for administration of the trust estate represents income from related activities and is added to income derived from the activity carried out by a public notary or attorney under the provisions of "revenue from independent activities."

Fiscal treatment of revenue derived from administration of the trust estate by the trustee, other than the trustee remuneration, is treated in accordance with the nature of the income and is taxable as per regulations applicable to each category of revenue. Upon determination of taxable income, fiscal losses of the founder are not deducted, the latter representing final losses. When the founder is an individual, fiscal obligations of the founder regarding the administered trust estate are fulfilled by the trustee.

When the beneficiary is an individual, income derived in cash or in kind by the beneficiary from the transfer of the trust estate by the trustee is subject to taxation as per provisions of Chapter IX of the Fiscal Code, "Revenue from other sources." Exception to this provision is when revenue is obtained by the beneficiary from the transfer of the estate when the beneficiary was the founder and under such circumstances, such revenue is not subject to taxation. The trustee has the obligation to value revenue derived from a value set by technical expertise, at the place and at the date of receipt of this revenue. Fiscal losses posted with respect to administration of the trust estate by the trustee represent final losses and cannot be deducted upon determination of taxable income for any subsequent beneficiary of the transfer of the trust estate by the trustee, when the beneficiary is an individual.

### LOCAL TAXES

Local taxes related to the fiduciary estate transferred under a fiduciary contract are settled by the trustee starting the first day of the month after the fiduciary contract is concluded, to the Budget of the local administrative units where the assets which represent the object of the fiduciary contract are located.

## INFORMATION – EXCHANGE RATE FOR THE DETERMINATION OF EXCISE TAXES IN 2012

The exchange rate which will apply for the determination of excise taxes in 2012 is 4.3001 RON/EURO as per the quotation of the European Central Bank (ECB). The exchange rate in force in 2011 is 4.2655 RON/EURO.



**Fiduciary contract represents adopting Anglo-Saxon concept of "trust" in Romanian legislation**



As per the Fiscal Code, the amount of excise taxes is determined by converting amounts denominated in Euro into RON at the exchange rate communicated by the ECB on the first business day of October of the previous year.

**EMERGENCY ORDINANCE 97 dated 14 July 2005 regarding evidence, domicile, residence and identity documents of Romanian citizens – Republication (Official Gazette 719/2011)**

**DECISION 898 dated 7 September to establish the form and content of residence permits, travel documents as well as other documents which are issued to foreigners (Official Gazette 690/2011)**

**ORDER 2205 dated 28 September 2011 to set the face value of a luncheon voucher for the second half of 2011 (Official Gazette 697/2011)**

For the second half of 2011, starting October, the face value of a luncheon voucher is RON 9 (unchanged).

**ORDER 2204 dated 28 September 2011 to set the monthly amount which is granted under the form of nursery voucher for the second half of 2011 (Official Gazette 697/2011)**

For the second half of 2011, starting October, the nursery voucher is RON 370 (unchanged).

**REMINDER – Mandatory documentation of the accounting policies**

We remind that as per the provisions of Order 3055/2009 to approve Accounting Regulations in conformity with EU Directives, any entity to which this Order applies must prepare and update a handbook of accounting policies in use.

Accounting policies represent principles, bases, conventions, rules and specific practice used by the entity for preparation and presentation of annual financial statements.

Examples of accounting policies: depreciation method chosen for depreciating non-current assets, revaluation of tangible fixed assets or use of historical cost, valuation method of inventory releases, inventory tracking using perpetual inventory system or periodical stock count, etc.

The Director must approve accounting policies for the transactions carried out, including own procedures for the circumstances set by law. For entities which do not have a Director, accounting policies are approved by the person to whom managing the entity lays.

Accounting policies must be drafted taking into account the specifics of the activity by financial and technical specialists who know the details of activity carried out as well as the strategy adopted by the entity.

Changes in accounting policies are allowed only if required by law or its outcome is more relevant or credible information on entity operations. In case of change in accounting policy, the entity must mention in Disclosure Notes the nature of changes in accounting policies, if any, as well as the reasons for which application of new accounting policies provide more sincere and relevant information to enable the information used to assess whether the new accounting policy was adequately chosen, the effect of changes upon declared performance of the period as well as the trends in entity performance.

The following are not considered changes in accounting policy:

- a) adoption of accounting policies for events or transactions which differ from points of view on events or transactions which occurred previously;
- b) adoption of accounting policies for events or transactions which have not occurred in the past or were previously insignificant.

Also in Order 3055/2009, it is stipulated that "regarding accounting regulations, the following must be taken into account:

- existence of an handbook of accounting policies;
- existence of an implementation of procedures in this handbook;
- existence of controls to ensure respect of the handbook..... "

**APEX Team can assist you in the preparation of the accounting policy handbook in conformity with legal provisions.**

**REMINDER – Organisation and performance of an inventory of patrimony**

Order 2861 dated 9 October 2009 (Official Gazette 704/2009) has established the legal framework, procedures documentation which is prepared at the time of the inventory of the enterprise patrimony.

**Companies must issue internal procedures regarding inventory which are approved by the company Director.**

**Provisions of the present Order apply to persons who obtain income from independent activities and who must as per law organise and maintain simple entry bookkeeping.**

In accordance with Accountancy Law 82/1991, republished, companies must perform an inventory of items they hold with the nature of assets, liabilities, equity at inception of activity, at least once during the financial year while carrying out its business, in case of merger or termination of business, as well as in other circumstances.

All elements having the nature of assets are placed under the responsibility of a keeper or are used by employees or company Director(s).

As per Accounting Law, entities which have a financial year different from the calendar year organise and perform an annual inventory in such a manner that the outcome of the inventory is included in the financial statement prepared for the year end that was chosen. In case of stock count in warehouses during



**Use exchange rate of 4.3001 RON/EURO for determination of excise taxes in 2012**

2	3	4	5	6	7	8	9	A	B	C	D	E
2	3	4	5	6	7	8	9	A	B	C	D	E
4	6	8	A	C	E	10	12	14	16	18	1A	1C
6	9	C	F	12	15	18	1B	1E	21	24	27	2A
8	C	10	14	18	1C	20	24	28	2C	30	34	38
A	F	14	19	1E	23	28	2D	32	37	3C	41	46
C	12	18	1E	24	2A	30	36	3C	42	48	4E	54
E	15	1C	23	2A	31	38	3F	46	4D	54	5B	62
10	18	20	28	30	38	40	48	50	58	60	68	70
12	18	24	2D	36	3F	48	51	5A	63	6C	75	7E
14	1E	28	32	3C	46	50	5A	64	6E	78	82	8C
16	21	2C	37	42	4D	58	63	6E	79	84	8F	9A
18	24	30	3C	48	54	60	6C	78	84	90	9C	AB
1A	27	34	41	4E	58	68	75	82	8F	9C	A9	B6
1C	2A	38	46	54	62	70	7E	8C	9A	AB	B6	C4
1E	2D	3C	48	5A	69	78	87	96	A5	B4	C3	D2
20	30	40	50	60	70	80	90	AO	BO	CO	DO	EO

the year, the amount of inventory existing at the date of performance is disclosed in the Inventory Register and is mentioned on inventory lists which are updated with the entries and stock releases which occur in the period between the stock count date and year end.

#### INVENTORY COMMITTEE

The inventory of items having the nature of assets, liabilities and equity is performed by an inventory committee which is appointed by a written resolution of the company Director. In the designation resolution, it is mandatory to indicate the composition of the committee (name of the President and committee members), mode of performance of the inventory, inventory method used, warehouse subject to inventory, as well as inception and completion date of inventory operations. The warehouse keeper in charge of the warehouse subject to inventory, the accountant who tracks inventory for this warehouse, internal auditors and statutory auditors cannot be appointed members of the inventory committee.

In case the entity has no employee, the Director is in charge of performance of the inventory.

#### ITEMS HELD BY THIRD PARTIES

Inventory lists including items which belong to third parties are transmitted to the natural or legal, Romanian or foreign persons to which the items belong within 15 working days after completion of the inventory so that the owner may communicate any discrepancies within 5 working days starting the date the inventory lists are received.

Lease companies must provide leasees/users with inventory lists regarding items representing the object of the contract. Based on information included on these lists, the leasing company can calculate and register adjustments regarding depreciation of assets or financial assets, if applicable.

In case the lessee/user does not provide inventory lists to the leasing company, the leasing company can record adjustments regarding depreciation of these items on the basis of market prices available at the inventory date, taking into account features of the item which represents the object of the lease (year of manufacture, useful life).

In this respect, entities which hold items must make a stock count and communicate the inventory lists for confirmation, just as the owners of these items must request confirmation of items held by third parties.

**Not receiving a confirmation of the existence of items held by third parties does not represent tacit confirmation.**

#### CONFIRMATION OF BALANCES

Receivable and payable balances are subject to verification and request for confirmation of the closing balances of receivables and payables with significant weight in these accounts using the "Statement of account" form (code 14-6-3) or by written reconciliation. Breach of these procedures as well as refusal to confirm represent an infringement to the present Norms and is punished as per law.

Cash at bank or at State Treasury in the entity books are reconciled with the closing balances as per bank statements. For this purpose, bank statements as at 31 December or the last banking day which will be provided by the banks and State Treasury will bear their official stamp. In case the entity has opted as per provisions of Law 82/1991 republished for a financial year other than the calendar year, information regarding the last day of the chosen financial year will then be taken into account.

#### INVENTORY LISTS

Each page of the inventory list is signed by the President and inventory committee members, by the warehouse keeper as well as by experts the inventory committee President has asked to participate in the identification of items subject to inventory.

In case the elements having the nature of assets are subject to inventory using electronic methods of identification (for example: bar code reader, etc.), data being directly transmitted into the financial and accounting management system, the inventory lists are issued directly by the IT system. Comprehensive lists are printed with all captions subject to inventory or in a selective manner only for captions for which differences in quantity or in value (depreciation) were found, if applicable. In case the inventory lists are only printed for the unique inventory items for which differences in quantity or in value were found, comprehensive inventory lists are kept in a magnetic format for the legal conservation period of such documents. In this case, the valuation of items to determine eventual adjustments is performed by analysis upon all items subject to inventory and not only upon those for which differences in quantity were found.

Partial stock counts, as well as stock counts performed during a year when the entity performs several stock counts, are performed in accordance with the present Norms, except for maintaining the "Inventory Register" (code 14-1-2) which is completed at the time of the annual inventory.

#### INVENTORY DIFFERENCES – ADJUSTMENTS / ATTRIBUTABLE / BALANCES

For all differences in plus or in minus, impairments to items found at the time of the inventory and losses subsequent to confirmation of receivable, the inventory committee requests written explanations from persons in charge of keeping the items, collecting receivables, etc. in order to establish the nature of missing quantities, losses, damages and impairments which were found as well as the provenance of excess quantities and make accounting entries in accordance with legal provisions regarding the modality to adjust the accounting data with factual data which result from the inventory.

In case of missing quantities which the warehouse keeper is liable for, the Director must charge them to the responsible person at replacement cost or at a value set by an expert committee in case these items cannot be purchased on the market.

To determine the applicable amount, in case missing quantities do not represent infractions, the possibility to balance missing quantities with quantities in excess is taken into account if the following conditions are met:

There is a risk of confusion between the types of tangible items due to their similarity regarding their



Organisation and performance of annual inventory of patrimony is mandatory



external aspect: colour, design, model, dimensions, packaging or other features;

- The differences found in plus or in minus refers to the same period and the same warehouse.

A balance is not admitted when it is proved that the missing quantities found at the time of the inventory come from subtraction or impairment of items performed by persons who are responsible for keeping these items.

Lists disclosing the type of goods, merchandise, packaging and other tangible items which meet conditions for balancing excess and missing quantities due to the risk of confusion **are approved annually** by the Director, the head of the public entity or the person who is responsible for management and are used for internal purposes within the entity.

Balancing is made for equal quantities between quantities in excess and missing quantities. Equalizing quantities is made starting with the items with the lowest unitary cost and in increasing order. Items which fall in weight/length/volume categories are admissible. In cases of balancing between quantities in excess and missing quantities, decreases are only computed when missing quantities are greater than quantities in excess. In this situation, decreases first apply to items for which missing quantities were found.

The Norms afferent to admissible limits for perishable items or internal norms in this respect do not apply by anticipation, but only after, and up to the limit of, missing quantities found. The limits for perishable items do not automatically apply, being considered upper limits.

**INVENTORY OUTCOME**

The outcome of the inventory is disclosed in minutes drafted by the inventory committee which includes:

- date prepared;
- names and surnames of members of the inventory committee;
- number and date of the resolution for appointment of the inventory committee;
- warehouse(s) subject to inventory;
- inception and completion date of inventory operations;
- results of inventory;
- conclusions and proposals of inventory committee regarding causes of quantities in excess and missing quantities found at the time of the inventory and persons liable for losses, as well as proposed corrective measures to be taken;
- volume of impaired inventories, inventory without movement or slow moving stock, items which are difficult to sell, without assured disposition and proposed measures to reintegrate them in the economic circuit;
- proposals to write off tangible and intangible fixed assets;
- proposals to withdraw low inventory balances from use and for impairment of or writing off inventory;
- findings regarding conservation, warehousing, safety, assurance of entirety of items in patrimony as well as other matters related to activities of the warehouses which were subject to inventory.

The proposals comprised in the minutes of the inventory committee are presented to the Director within 7 working days after completion of the physical inventory counts. The Director will decide the measures to be taken, in coordination with the head of the accounting and finance department and the head of the legal department in accordance with legal provisions.

**INVENTORY REGISTER**

In case the inventory is performed during the year, data resulting from the physical inventory are updated with entries and releases for the period from the date of inventory and the date for closing the financial year, the updated data being noted in the inventory register.

**Completing the inventory register is made at the time all balances of all the balance sheet accounts are finalized including those related to corporate tax and adjustments for depreciation or impairment, if any.**

**The inventory register can be adapted to the specifics and internal requirements under the condition that mandatory minimum information is disclosed.**

Results of the inventory must be recorded in the evidence kept for tracking operations within the 7 working days from the date of approval of the minutes of inventory by the Director.

**REMINDER – REVALUATION OF LAND AND BUILDINGS**

The accounting law does not oblige enterprises to revalue land and buildings every 3 years. From an accounting point of view, the European Directive and implicitly IAS 16 rules apply and there is no provision regarding frequency of revaluation except for indications of changes in fair value.

Revaluation every 3 years is based on the following:

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

First revaluation in case of an increase in value of the asset is recorded according to one of the following 2 methods:

- Gross method (for increases in value: Debit "Building" account and Credit account 105 "Revaluation

Unitatea:		LISTA DE INVENTARIERE				Centru:		Pagina:	
Magazin:		Loc de depozitare:							
Su. crt.	Denumirea bunurilor inventariate	Cod	U.M.	Cantitate	Preț unitar de evaluare (lei)	Valoarea contabilă	Valoarea de inventar	Valoarea	Monedă
1		2	3	4	5	6	7	8	9
Total pagină				x	x	x			
Stare și personalitate				Cantitatea de inventar		Contabilitate	Contabilitate*	Contabilitate	
Semnatura:									

**Be careful when drafting inventory lists!**





**Revaluation of land and buildings now deserves full attention considering applicable local taxes**



difference" for revaluation of gross value, and simultaneously, depreciation of revaluation difference: Debit account 105 "Revaluation difference" and Credit "Accumulated depreciation").

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

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

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

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

Under these circumstances, local tax authorities should be contacted for the increased tax rates in force, by location. Standard tax rates (from 0.25% to 1.50%) and the increased tax rates (from 10% to 40%) for buildings are established at the discretion of each community. A community with a large number of enterprises and considered prosperous should not have a very aggressive policy regarding the level of local taxes, as it collects income tax for all employees who work in the area. A cost-benefit analysis of appraisal fees compared to the effect of increased taxes should also be taken into account.

**Be aware!** As per amendments introduced to the Fiscal Code by OG 30/2011 (presented in APEX Team newsletter no. 9\_2011), the tax rate for buildings which have not been revalued during the last 3 years increased from 5%-10% to 10%-20% of gross value. For buildings which have not been revalued during the previous 5 years, the tax rate is between 30% and 40%. Only fully depreciated buildings are taxed as per the standard rate of between 0.25% and 1.50% of gross value.

#### **Subsequently, timely revaluation of land and buildings become mandatory.**

Another issue regarding revaluation of land and buildings ought to be mentioned as it represents a concern and refers to the obligation to record the outcome of the revaluation in accounting records. Thus, as per provisions of article 253 (5) "In case a building has been revalued in accordance with accounting regulations, the tax base is the accounting value which results from the revaluation as recorded in the accounting records of the owner which is a legal entity." Subsequently, recording the outcome of the revaluation becomes mandatory and, therefore, must be presented in the financial statements.

Order 3055/2009 to approve Accounting Regulations in conformity with EU Directives stipulates that an enterprise can adopt the historical cost method or fair value method to report its tangible assets, the same as provisions of IAS 16.

We observe that although important steps were undertaken to separate accounting issues from tax matters, the Fiscal Code requires that an enterprise using the historical cost asset valuation method must recognize of the outcome of revaluations in accordance with the fair value method, this situation can generate breach of company/group accounting policies and alteration of performance comparability.

#### **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 October 2011:

1 EUR = 4.3243 RON; 1 USD = 3.0889 RON; 1 CHF = 3.5448 RON; 1 GBP = 4.9454 RON

#### **NOVEMBER 2011 – 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 electronic employee registers with information regarding labour contract inception/ amendment or 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 7<sup>1</sup> 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 November 2011

##### **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 November is the last day to submit

- Form 092 (*amendments*) to change VAT return periods from Quarterly to Monthly for EU acquisitions of goods in October 2011. Starting October, the VAT return will be submitted monthly.

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

- Return on collection of hotel tax

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

- Hotel tax
- Advertising service tax

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

- INTRASTAT statement for October 2011 (standard or extended submitted on-line)

#### That Tuesday 15 November is the last day to pay:

- Agricultural revenue tax (50% Instalment II and final for 2011).
- Billboard tax (Instalment IV and final for 2011)

#### That Friday 25 November is the last day to submit

- State budget liability return (form 100)\*;
- Return regarding social contributions, income tax and nominative list of insured persons (mandatory on-line submission of form 112\*);
- VAT return (form 300)\*;
- Recapitulative statement of EU Supplies/acquisitions/services (form 390)\* for October 2011;
- Return regarding the state of acquisitions and deliveries of excisable products for the month of October 2011;
- Special VAT return for VAT non payers (form 301)\*;
- 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);
- Environment Fund Statement (excluding "ecotax").

#### That Friday 25 November is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole account – **State Budget**
  - o Tax on crude oil and natural gas from domestic production
  - o Withholding tax on non-resident income
  - o Income tax on salary (*separate bank transfer for headquarters and each secondary establishment*)
  - o Tax on income from independent activities, withheld at source
  - o Tax on interest income
  - o Tax on investment income
  - o Tax on pension income
  - o Tax on income from prizes and gambling
  - o Tax on income from other sources
  - o Contribution for non employment of disabled persons for employers with headcount over 50
- Liabilities to the sole account – Public Insurance Budget and special funds
  - o Social security contribution (*pension*)
  - o Health insurance contribution
  - o Medical leave contribution and health insurance allowance
  - o Unemployment contribution
  - o Contribution to fund to guarantee payment of salary liabilities
  - o Contribution to work accident and occupational disease fund
- Contribution to Environment Fund ("ecotax" excluded).

And in perspective:

#### That Thursday 1<sup>st</sup> December is a legal holiday, being Romania's National Day!

All forms mentioned above as well as guidance on their preparation may be downloaded from the Ministry of Public Finance website: [www.mfinante.ro](http://www.mfinante.ro)

Tax returns noted with an asterisk (\*) can be submitted by remote means of electronic transmission by large and medium size taxpayers as well as by taxpayers which have opted to file their returns on-line and which hold a digital certificate.



**Prize awarded to  
APEX Team by  
Romanian Body of  
Chartered  
Accountants**



## KEY HR FIGURES

2011 Contributions	Employer and Beneficiary of activities considered dependent activities (% rate)	Employee and provider of dependent activities (% rate)
Social security contribution ( <i>pension</i> )	20.8% for normal working conditions 25.8% for particular working conditions 30.8% for special working conditions (contribution base capped at an amount representing the average amount of insured persons during the month for which the contribution is determined as 5 times the average monthly gross salary) <sup>1</sup>	10.5% (contribution base per employee capped at 5 average monthly gross salaries according to Budget for public social insurance, i.e. 5 x 2,022 = RON10,110) <sup>1</sup> (contribution base for a person under civil contract: gross income)
Health insurance fund (based on gross salary)	5.2%	5.5%
Medical leave contribution and health insurance allowance (based on gross salary)	0.85%	
Unemployment fund (based on gross salary)	0.5%	0.5%
Work accident and occupational disease fund (based on gross salary) <sup>2</sup>	0.15% - 0.85% depending on CAEN code for main activity	
Contribution to fund to guarantee payment of salary liabilities (based on gross salary)	0.25% (only for employees under labour contract included for retired persons)	
Salary tax		16%
Contribution for non employment of disabled persons (for employers with more than 50 employees)	4 x 50% minimum gross salary (RON 670) for every 100 employees	
Minimum monthly gross salary as per Government Decision 1193/2010	RON 670	
Luncheon voucher starting from March 2011 subject to income	RON 9	
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: Contribution to pension is also due during periods when the insured person benefits from medical leave and health insurance allowance. For these periods, the contribution base is 35% of the average monthly gross salary corresponding to the number of business days of medical leave.

Note 2: Contribution for work accident and occupational disease is also due during periods when the insured person benefits from medical leave and health insurance allowance. For these periods, the contribution base is the minimum gross salary where payment is guaranteed on a national basis corresponding to the number of business days of medical leave.

Note 3: Income paid to a person who carried out an activity considered dependent activity (example: in-house "captive" PFA or who meets at least 1 out of the 4 re-qualification criteria mentioned in OUG 82/2010) is disclosed on a separate "Payment statement" and is included on form 112.

Contributions	Income payer / Beneficiary of professional activities (of author or person under civil contract) (% rate)	Provider of professional activities (author or person under civil contract) (% rate)
Contribution to social insurance ( <i>if applicable</i> ) (based on gross income reduced by the standard deduction as deemed expenses for intellectual property rights and based on gross income for persons under civil contract and in both cases capped at 5 average monthly gross salaries, i.e. 5 X 2,022 RON)	0%	10.5% <sup>1</sup>
Contribution to health insurance	0%	0% <sup>2</sup>
Contribution to unemployment insurance ( <i>if applicable</i> )	0%	0.5% <sup>3</sup>
Income tax		16% <sup>4</sup>

1 The income payer calculates, withholds, pays and declares the individual contribution for pension (CAS) if the author or person under civil contract does not prove he/she is retired or insured in another pension regime within Pillar 1.

2 The author or the person under civil contract remains responsible for submitting his/her return for health insurance as well as for payment of the health contribution as per Law 95/2006.

3 The income payer withholds, pays and declares the individual contribution for unemployment if the author or the person under civil contract does not prove he/she is insured by option with the unemployment insurance regime.

4 Regarding income tax, it remains possible for the author to have 10% of his/her income tax withheld when author's rights are paid, and to annually declare author's rights income obtained to tax authorities and to adjust the 10% income tax rate to 16%, paying the balance due.

Regarding a Director appointed in the Constitutive Deed (and not through an administration or management contract) and to whom a General Shareholder meeting resolution grants remuneration, he/she must insure himself/herself in the public pension regime via an insurance declaration unless he/she is not already an insured person. The base for his/her contribution is at his/her decision but cannot be less than 35% of average monthly gross salary as per Budget for public social insurance (i.e. RON 2,022 x 35%) but no more than 5 average monthly gross salaries. The rate of contribution is 31.3%. The insured person can be a Romanian citizen, a citizen of another State or stateless for the period he/she has, as per law, his/her domicile or residence in Romania.

As for the legal entity which grants such remuneration, it must make a contribution to health insurance at a tax rate of 5.2% and also for medical leave allowances of 0.85%. The legal entity will also declare and pay the health contribution (5.5%) and income tax which it will have to withhold from the Director's remuneration.

*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 »
- Consulting and assistance in drafting transfer price files
- Start up services
- Organization of the accounting function
- Assistance in implementation of ERP
- Training

**Our Mission:**  
**Adding Value to Client's Business**

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