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Contents:

- Fiscal Code Amendments starting 1st January 2011
- Restrictions regarding deductibility of petrol/fuel expenses as well as restrictions regarding deductibility of VAT on purchase of automobiles and petrol/fuel continue to apply in 2011
- Sole return disclosing contributions, withheld income tax and list of insured persons (form 112) to be submitted for the very first time by 25 February
- Ex officio update of fiscal status (vector fiscal)
- Centralisation of secondary establishment fiscal obligations at main headquarters
- Declaration and adjustment of previous periods regarding income tax withheld from salaries
- 2010 annual financial statements only submitted with tax authorities
- When financial year does not match with calendar year, an annual report as at 31.12.2010 submitted to tax authorities
- NBR reference interest rate – January 2011
- Inflation rate for banks to update quarterly advance profit tax payments
- What exchange rate to use?
- Inventory statement of balances of contributions to medical leave and health insurance allowance – outstanding or recoverable
- National Institute for Statistics inflation rate
- Valuation of monetary items in foreign currency as at 31 January 2011
- Determination of Quarter IV 2010 profit tax and submission of form (s) 101
- February 2011 Agenda
- Key HR Indicators

EMERGENCY ORDINANCE 117 dated 23 December 2010 to amend and complement Law 571/2003 – Fiscal Code and to establish financial and fiscal measures (Official Gazette 891/2010)

As mentioned in the December 2010 APEX Newsletter, additional information is given in this newsletter regarding amendments to the Fiscal Code, Code of Fiscal Procedure and Ordinance 77/2009 regarding organisation and operation of gambling activities by OUG 117/2010.

We remind that the December 2010 newsletter disclosed the following:

- Reintroduction of tax on micro enterprise revenue
- Introduction of social contributions within the Fiscal Code
- Taxation of revenue from unidentified provenance

We present other amendments introduced by the Ordinance below:

TAX ON PROFIT

- Restrictions regarding deductibility of petrol/fuel expenses continue to apply in 2011.**
- Transactions carried out by/with a taxpayer declared inactive by an ANAF Presidential Order are disregarded by tax authorities. It was previously mentioned in the Fiscal Code that the tax authorities "may not take them into account." Subsequently, the possibility for tax authorities to apply a different treatment depending on the circumstances is cancelled.

INCOME TAX

- Income tax exemption as per article 42 letter e) regarding vouchers granted free of charge to individuals in accordance with legal provisions in force is abrogated.

REVENUE DERIVED FROM INDEPENDENT ACTIVITIES

- For the taxpayer who obtains commercial revenue, net annual income is determined on the basis of income quota regulations where the activity is carried out.
- Quota income for any independent activity carried out by a taxpayer who obtains commercial income cannot be lower than the minimum gross salary in which payment is guaranteed on a national basis at the time compensation for independent activity is set, multiplied by 12. These provisions also apply for activity carried out within an association which is not a legal entity, quota income being set for each participant in the association.
- Upon determination of annual quota income, the lower limit determined by the minimum gross salary (where payment is guaranteed on a national basis) multiplied by 12 represents net annual income before application of the criteria.
- For the taxpayer who carries out independent activity which generates commercial revenue for a period of less than a calendar year, quota income regarding such activities is adjusted in order to reflect the portion of the year when the activity is carried out. If the taxpayer carries out two or several activities which generate revenue, net income from these activities is established by totalling quota income corresponding to each activity.
- Carrying forward net annual tax losses from disposal of securities other than shares and securities of closed companies can be applied to profit tax for the next 7 consecutive tax years (previously 5 years).
- Taxpayers who obtain, individually or under a form of association, revenue from independent activities, rental revenue, or agricultural revenue determined upon actual taxable income must submit an annual income return with tax authorities by 15 May of the subsequent year (deadline for submission of the return was previously 25 May). Any additional tax is to be paid within 60 days from the date of communication of the tax resolution issued by tax authorities (deadline for payment was previously 25 May).
- Taxpayers who obtain income from abroad must declare it on a specific return before 15 May of the subsequent year (deadline for submission of the return was previously 25 May).

TAX ON NON RESIDENT REVENUE

- Tax on dividends at a rate of 10% is abrogated for dividends paid by a Romanian legal entity or a legal entity with its headquarters in Romania to a legal entity which is resident in another EU member State or in one of the EFTA countries (Iceland, Liechtenstein, Norway). The tax rate on dividends paid to a non resident legal entity is 16% unless exempted as per European legislation or at the rate in force as per double taxable treaties.

VAT

- ☑ Wording of article 133 regarding the location of the provision of services is subject to some amendments. For **transport of goods outs the Community** for taxable entities established in Romania, the place of the provision of services is outside the Community.
- ☑ **Restrictions regarding deductibility of VAT on purchase of automobiles and petrol/fuel continue to apply in 2011.**
- ☑ The right of VAT deduction is granted for purchases made within procedures of forced execution by a taxable person from a taxpayer declared inactive by an ANAF Presidential Order or from a taxable person whose temporary inactivity was declared with the Trade Register. Conditions to benefit from the deduction right will be set by Norms.
- ☑ Reverse tax applies to transfer of certificates regarding gaz emissions.
- ☑ A taxable person registered under the scope of VAT as per article 153 which, during a calendar year, has not exceeded the exemption threshold of Euro 35,000 (RON 119,000), may apply for de-registration from the list of persons registered under the scope of VAT as per article 153 by 20 January of the subsequent year, for the purpose of applying the special exemption regime. De-registration will be effective starting the first day of the month after application for de-registration, i.e. on 1st February. The taxable person establishes whether turnover is lower than the exemption threshold on the basis of information disclosed in sales journals regarding operations made during the calendar year. Until de-registration, all the rights and duties required of a person registered under the scope of VAT as per article 153 apply. The taxable person which applies for de-registration in the mentioned timeframe must submit a VAT return for operations made during the month of January by 25 February at the latest. In the last VAT return which is submitted by the taxable person, the outcome of all VAT adjustments will be disclosed.
- ☑ Thresholds below which informative statements regarding turnover posted during the previous year are to be submitted on or before 25 February of the subsequent year are amended as follows:
 - o Informative statement regarding supply of goods and provision of services realized in 2010 by taxable persons registered under the scope of VAT (form 392A). This statement must be submitted by persons registered under the scope of VAT who posted turnover of up to Euro 35,000 (previously Euro 10,000) will declare:
 - total turnover from supply of goods and services rendered to persons registered under the scope of VAT as per article 153 as well as total amount of related VAT;
 - total turnover from supply of goods and services rendered to persons who are not registered under the scope of VAT as per article 153 as well as total amount of related VAT.
 - o Informative statement regarding supply of goods and provision of services as well as acquisitions made in 2010 by entities which are not registered under the scope of VAT (form 392B). This statement must be submitted by persons who are not registered under the scope of VAT and posted a turnover less than Euro 35,000, excluding revenue derived from tickets sales to passengers for international road transport. The statement discloses the following information:
 - total turnover from supply of goods and services rendered to persons registered under the scope of VAT as per article 153;
 - total turnover from supply of goods and services rendered to persons which are not registered under the scope of VAT as per article 153;
 - total amount and related VAT on acquisitions from persons registered under the scope of VAT as per article 153;
 - total amount and related VAT on acquisitions from persons which are not registered under the scope of VAT as per article 153.

EXCISE TAXES

- ☑ Excise taxes on petrol/fuel and cigarettes are amended. Excise taxes on coffee remain unchanged.
- ☑ Starting 1st July 2011, the computation method which is specific to cigarettes will change.

MANDATORY SOCIAL CONTRIBUTIONS

A new Title is added to the Fiscal Code, Title IX² "**Mandatory social contributions.**"

Social contributions

- ☑ The monthly contribution base represents total of gross income obtained by resident and non resident persons on the basis of a labour contract (or duty relationship or special status) as well as income assimilated to salaries (Director's remuneration, sole shareholder, managers under steward contract, etc.).
- ☑ **Capped contribution for the employer or for the income payer: its social insurance contribution (*pension*) is 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 (i.e. RON 2,022 as per Budget for public social insurance multiplied by 5).**
- ☑ **The employer is also subject to the social insurance contribution (*pension*) for the periods the insured person benefits from medical leave and health insurance allowances. For these periods, its contribution base is 35% of the average monthly gross salary corresponding to the number of business days of medical leave.**
- ☑ **Capped contribution for the insured person (named individual contribution): his/her social insurance contribution (*pension*) is capped at 5 average monthly gross salaries as per Budget for public social insurance, i. e. $5 \times 2,022 = \text{RON } 10,110$.**
- ☑ **The insured person is also liable for his/her social insurance contribution (*pension*) for the periods when he/she benefits from medical leave and health insurance allowances. For these periods, his/her contribution base is 35% of the average monthly gross salary corresponding to the number of business days of his/her medical leave.**
- ☑ Contributions to social health insurance and to unemployment insurance are not capped for the employer or for the insured person, both being calculated on a basis established by the Fiscal Code.
- ☑ Some **exceptions** to the payment of social contributions are set, among them:
 - o Non taxable salary income are exempted from payment of social contributions, but this applies only to contributions by the insured person;
 - o Some employee benefits are excluded upon determination of the insured person's contribution base (insurance premiums supported and paid by the enterprise for its own employees or other income beneficiary which are not mandatory, at the time of payment of the respective premiums) or other benefits which are taxable (gift vouchers, nursery vouchers, company telephone and company car used for personal purposes, etc.);

- o Specific exceptions are introduced regarding payment of social insurance contribution (*pension*), contribution to work accident and occupational disease, and unemployment contribution. They regard monetary income which represents remuneration established for the Director as per constitutive deed or as per a resolution of a general shareholders meeting as well as the net profit which the Director of a commercial company is entitled to. The exemption from social contribution applies to both the insured person and to the income payer;
- o Some provisions of special laws ruling social contributions are amended, especially regarding contribution base and modality of declaration in accordance with provisions of the Fiscal Code.

Returns

- ☑ **The employer or the income payer declares income tax withheld and the nominative list of insured persons in sole return for social contributions.** The "return regarding social contributions, income tax and nominative list of insured persons" (form 112) is used to declare social contributions starting with the tax month of January 2011, with a submission deadline of 25 February 2011. The return can be submitted to tax authorities in paper format during a transition period ending 1st July 2011, after which the return may only be submitted online.
- ☑ Besides, employers must submit by 15 February 2011 an "inventory statement" of contributions for medical leave and health insurance allowances which are outstanding/not recovered as at 31 December 2010 and are not settled/collected as at 31 January 2011.
- ☑ Amounts representing health insurance allowances paid by the employer to the employee on behalf of the Unique National Fund for social health insurance (FNASS) which exceed the same month's employer contribution for medical leave and health insurance allowances (administered by FNASS) are recovered according to conditions set in Implementation Norms to the Ordinance from FNASS on budgetary credits made available for this purpose. Unrecovered health insurance allowances paid by the employer to the employee can no longer be carried forward to reduce future employer contributions.

CODE OF FISCAL PROCEDURE

- ☑ **When a taxpayer has secondary establishments, it is the taxpayer and not the secondary establishments which settle fiscal liabilities, including those regarding income tax withheld from employees who carried out their activities at secondary establishments which are registered with tax authorities.**
- ☑ Tax inspection bodies now have the possibility to use indirect methods which are ruled by law for reassessment of revenue and expenses in case documents presented during a tax inspection are incorrect, incomplete, do not exist or were not made available to fiscal authorities.
- ☑ Special provisions are established for prior inspection of the fiscal position of individuals with respect to income tax ruled by Title III of the Fiscal Code by comparing the respective tax inspection ruling on taxable income and the amount declared by the taxpayer or income payer for the purpose of determining what the taxpayer's fiscal actual position is.
- ☑ In case tax authorities find a significant difference of at least 10% but not less than RON 50,000 between declared income by the taxpayer or income payer and the real fiscal position of the individual subject to income tax, tax authorities will proceed with a fiscal inspection (by communication of an inspection notice) and will determine the taxable

base by applying one of the indirect methods for taxation (provenance and expenditure of funds, cash flow, property). Implementation procedures will be established by a Government Decision.

- ☑ Under risk of preclusion, the taxpayer or income payer has the right to present supporting documents or provide probing clarification regarding the fiscal position within 60 days starting date of communication of the inspection notice. Tax authorities have the obligation to require such documents and clarification from the taxpayer or income payer within the same timeframe. The 60 day timeframe can be prolonged on one occasion, for 30 days, upon justified taxpayer request and with tax authority approval.
- ☑ The outcome of the tax inspection is drafted in a written report which will present findings in fact and in law. The report will establish a resolution to terminate inspection procedures when the taxable base is not adjusted or a fiscal resolution when the taxpayer is liable for additional tax liabilities.

GAMBLING

The Ordinance also introduces amendments to Emergency Ordinance 77 regarding organisation and operation of gambling activities (Official Gazette 439/2009):

- ☑ Gambling operators will only permit access to their licensed premises for holders of entrance tickets which can only be valid from 8 AM to 8 PM. The entrance ticket will cost:
 - o 20 RON for games of chance;
 - o 5 RON for slot machine gambling.
- ☑ Amounts collected by operators for entrance tickets during one month are fully paid to the State Budget before the 25th of the subsequent month.

Fines for breaching these provisions are set in the Ordinance.

To return to tax on profit, even if not related to amendments introduced by OUG 117/2010, we underline the fact that provisions of article 19² of the Fiscal Code regarding tax on profit, tax exemption of reinvested profit no longer applies in 2011. As per point 13 of article 19², these provisions are applicable through 31 December 2010.

ORDER 52 dated 19 January 2011 regarding *ex officio* update of fiscal status ("*vector fiscal*") regarding income tax on salary and social contributions as well as procedure to declare obligations set per the "Fiscal Liabilities" List in appendix 2 of Government Decision 1397/2010 regarding model, content and modalities to submit and administer "return regarding social contributions, income tax and nominative list of insured persons" which pertain to declaration periods prior to 1st January 2011 (Official Gazette 68/2010)

Starting 1st February 2011, tax authorities will update, *ex officio*, the fiscal status ("*vector fiscal*") of taxpayers which have secondary establishments with at least 5 employees in the scope of income tax on salary starting the month of January, as follows:

- ☑ The obligation for taxpayers which are also employers to declare income tax on salary and to register this fiscal status with tax authorities;
- ☑ The obligation to declare income tax on salary is removed for the secondary establishments with headcount of less than 5 employees and to de-register this fiscal status in accordance with the law.

Starting 1st February 2011, the electronic database including information regarding fulfilment of declarative obligations with respect to income tax on salary is transferred from tax authorities where secondary establishments with a headcount of at least 5 employees were registered to tax authorities in charge

of administering the taxpayer which set up these secondary establishments.

Starting 1st February 2011, tax authorities in charge will update the fiscal status ("*vector fiscal*") of the taxpayer liable for income tax on salary and social contributions, to a monthly tax period, starting with declarative obligations pertaining to the month of January 2011.

Fiscal obligations set in the "Fiscal Liabilities" List of appendix 2 of Government Decision 1397/2010 regarding model, content and modalities to submit and administer "return regarding social contributions, income tax and nominative list of insured persons" which pertain to declaration periods prior to 1st January 2011 are declared and adjusted in accordance with specific legislation which was in force during the period in which they pertain.

Declarative obligations regarding income tax on salary pertaining to the last fiscal period of 2010 which was due 25 January 2011 should comply with legal provisions and procedures in force through 1st January 2011.

Starting 1st February 2011, income tax on salary to which secondary establishments with at least 5 employees is liable and which pertains to declaration periods prior to 1st January 2011 is declared to and adjusted with tax authorities. Declaration and adjustment is made with the tax authority in charge of administering the taxpayer which set up the secondary establishment, as follows:

- form 100, "State Budget liability return," is submitted together with "Statement regarding income tax on salary form, broken down by secondary establishment, pertaining to declaration periods prior to 1st January 2011;"
- form 710, "Adjusted return," is submitted together with the form, "Adjusted statement regarding income tax on salary, broken down by secondary establishment, pertaining to declaration periods prior to 1st January 2011."

In case income tax on salary pertaining to declaration periods prior to 1st January 2011 regards both the secondary establishments and the main establishment of the taxpayer who set them up, the liability is summarized on form 100, "State Budget liability return," if applicable, or on form 710, "Adjusted return," accompanied in both circumstances by the statement regarding income tax on salary by secondary establishment mentioned above.

Above mentioned forms are published in appendices to the Order and are prepared and submitted as per modalities set for form, 100, "State Budget liability return" and form 710, "Adjusted return."

We review the purpose of the 2 new forms below:

- STATEMENT regarding income tax on salary, broken down by secondary establishment, pertaining to declaration periods prior to 1st January 2011**

It represents an appendix to form 100, "State Budget liability return." It is completed for obligations for income tax on salary which were not declared by 1st February 2011, by secondary establishments as well by the main establishment of the taxpayer, if applicable.

- ADJUSTED STATEMENT regarding income tax on salary, broken down by secondary establishment, pertaining to declaration periods prior to 1st January 2011**

It represents an appendix to form 710, "Adjusted return." The form is prepared for adjustments made after 1st February 2011, including when income tax on salary to which secondary establishments are liable is adjusted as well as when both income tax on salary to which secondary establishments are liable and income tax on salary to which the main establishment is liable require adjustment.

ORDER 2870 dated 23 December 2010 regarding main issues for preparation/submission of financial statements and accounting reports to tax authorities (Official Gazette 889/2010)

As mentioned in the December 2010 APEX Newsletter, additional information is provided in this newsletter regarding amendments introduced by Order 2870 regarding financial statements/annual reports as at 31 December 2010.

Preparation and submission of annual financial statements as at 31 December for entities for which the financial year matches the calendar year

Annual financial statements (comprehensive or simplified)

Legal entities that, at year-end, exceed 2 of the 3 size criteria set per Order 3055/2009, as follows:

- total assets: Euro 3,650,000
- net turnover: Euro 7,300,000
- average headcount: 50

prepare comprehensive annual financial statements which include:

1. balance sheet (code 10)
2. income statement (code 20)
3. statement of changes in equity;
4. cash flow statement;
5. disclosure notes.

Enterprises which do not meet the above mentioned size criteria prepare simplified annual financial statements which include:

1. short balance sheet (code 10);
2. income statement (code 20);
3. disclosure notes.

The Statement of changes in equity and cash flow statements are optional.

The comprehensive or simplified annual financial statements will be accompanied by an "Informative data" form (code 30) and the "Statement of fixed assets" form (code 40).

Disclosure notes set per Title 8 of Accounting regulations in conformity with EU Directive IV are not abbreviated: notes must at least disclose the information set in this title.

For preparation of 2010 annual financial statements, assessment of the size criteria is made at year-end on the basis of indicators derived from 2009 annual financial statements as well as from accounting data and the trial balance at year-end 2010 using the exchange rate published by the National Bank of Romania at year-end.

Newly set up entities can prepare for their first financial year with either simplified or comprehensive annual financial statements. For their second financial year, indicators derived from first year annual statements will be considered as well as accounting data and the trial balance as at the end of the current year, to determine the scope (comprehensive or simplified) of annual financial statements.

Commercial companies whose securities are traded on a regulated market as defined by legislation in force regarding the capital market must prepare comprehensive annual financial statements (with the 5 components) even if they do not exceed 2 of the 3 size criteria set by the Regulations.

The above provisions regarding components of the annual financial statement also apply to branches registered in Romania which belong to legal entities which have their registered headquarters abroad. For the purpose of preparing annual financial statements for sub-units, the closing balance of account 481 "Liaison account between headquarters and sub units" and 482 "Transactions between sub units" is reclassified as the case may be to account 461 "Sundry debtors" in a distinct sub-account or to account 462 "Sundry creditors" in a distinct sub-account. At inception of the subsequent year, these book entries are reversed.

The electronic format of annual financial statements for entities in which the financial year matches the calendar year, including necessary forms and the online verification application with instructions for use, is obtained using guidance on preparation made available by Ministry of Public Finance (MFP).

On the "Informative data" form, rows 01 and 02, column 1, entities which have under their subordination sub-units will report the figure 1 irrespective of the actual number of sub-units. Under the caption regarding outstanding liabilities, amounts which were overdue as at year-end considering due dates as per contract or text of law are disclosed.

Signature

Annual financial statements are signed by persons who are entitled to do so, their full name being clearly disclosed.

Regarding the quality of the persons who prepare financial statements, they can be:

- Economic Director, chief accountant or any other person entitled to fulfil this position as per law. Any other person entitled to fulfil this position means any other employee as per law who meets the conditions set by Accountancy Law 82/1991 republished;
- Natural or legal entity, licensed, member of the Romanian Body of Authorised and Chartered Accountants (CECCAR), their registration number with the professional body being disclosed.

Submission

As per articles 29 and 30 of Accountancy Law 82/1991, republished, the annual financial statements are accompanied by a Director(s)' report, an audit report or report of the "cenzori" committee, if applicable, and the proposal for profit allocation.

Financial statements are also accompanied in accordance with article 10 point 1 by a written representation by the legal representative stating he/she is responsible for the annual financial statements and confirming that:

- Accounting policies used for the preparation of the annual financial statements are in conformity to the applicable accounting regulations;
- Annual financial statements give a fair view of the financial position, financial results and other information regarding the activity carried out;
- There is no going concern issue.

Annual financial statements are submitted directly to the local offices of the Ministry of Finance or by registered postal mail.

Annual financial statements are no longer submitted to the Trade Register, tax authorities being in charge of transmitting information to Trade Register.

Legal entities which, from set up date through 31 December 2010, have not carried out any activity do not prepare annual financial statements, but submit a statement under own responsibility regarding no business activity with the local offices of MFP. The statement will include full identification of the entity, as follows:

- Full name (as per registration certificate);
- Address and phone number;
- Registration number with the Trade Register;
- Fiscal Code / sole registration code;
- Share Capital.

Deadlines for submission of annual financial statements at local Ministry of Public Finance (MFP) offices:

- 150 calendar days after year-end for commercial companies, national companies, "regii autonome," national institutes for research and development;
- 150 calendar days after year-end for the sub units registered in Romania which belong to legal entities which have their registered headquarters abroad;

- 120 calendar days after year-end for the other entities subject to article 1 of Accountancy Law 82/1991.

Legal entities which, from set up date to 31 December 2010, have not carried out any activity as well as those under a liquidation procedure, as per law, will submit a statement under own responsibility regarding this position to the local offices of MFP within 60 calendar days of year-end.

Preparation and submission of annual reports as at 31 December for entities for which the financial year differs from the calendar year, as per article 27 point (3) of Accountancy Law 82/1991

Entities which have opted for a financial year differing from the calendar year as per provisions of article 27 point (3) of Accountancy Law 82/1991, irrespective of their form of organisation and ownership must prepare and submit an annual report as at 31 December with local offices of MFP.

This annual report is different from annual financial statements closed at the year-end chosen by the entity.

This annual report is submitted directly to the local offices of the Ministry of Finance or by registered postal mail.

Annual Report

The annual report as at 31 December includes the following forms:

- Statement of assets, liabilities and equity (code 10);
- Statement of income and expenses (code 20);
- Informative data (code 30);
- Statement of fixed assets (code 40).

The annual report is prepared on the basis of the summarized trial balance closed as at 31 December.

The electronic format of the annual report as at 31 December, including necessary forms and the online verification application with instructions for use is obtained using guidance on its preparation made available by MFP.

This application is different for entities which opted for a financial year other than the calendar year as per provisions of article 27 point (3) of Accountancy Law 82/1991 upon preparation of their annual financial statements.

Improper completion of the first page of the "Statements of assets, liabilities and equity" form with data that ought to be disclosed, or preparing forms included in the annual report as at 31 December with inaccurate data which leads to the inability to identify the entity or the economic and financial position, is subsequently considered as if the annual report was not submitted and the entity is punished as per provisions of article 42 of Accountancy Law 82/1991.

Signature

The annual report as at 31 December is signed by persons who are entitled by law to sign annual financial statements.

Deadline for submission of annual report

Deadline for submission of the annual report as at 31 December with local MFP offices is 150 calendar days after the end of the calendar year.

The annual report is submitted in magnetic format, accompanied by a printed version obtained using guidance provided by an MFP online computer program which is duly signed and stamped.

Entities which opted for a financial year differing from the calendar year and have not carried out any activity, from set up date to 31 December 2010, as well as those under a liquidation procedure, as per law do not prepare an annual report as at 31 December, but submit a statement under responsibility of the person in charge of its management. The statement will include full identification of the entity, as follows:

- Full name (as per registration certificate);
- Address and phone number;

- Registration number at the Trade Register;
 - Fiscal Code / sole registration code;
 - Share capital (if it is not a Branch).
- Submission to the local offices of MFP regarding no business activity is 30 calendar days after end of calendar year.

REMINDER – Audit

Annual financial statements prepared by a commercial company which is listed on a regulated market are to be audited. This also applies to entities qualified as being of public interest. Joint Stock Companies opting for the dualist Executive Board system (under the control of a Supervisory Board) are subject to a financial audit.

Irrespective of the legal status (S.A. or SRL), the financial statements prepared by legal entities exceeding criteria set by point 3 paragraph 1 of Accounting Regulations in conformity with CEE Directive IV are to be audited. Thus, the financial statements must be audited when 2 of 3 limits mentioned below have been exceeded for 2 consecutive financial years:

- total assets Euro 3,650,000;
- net turnover Euro 7,300,000;
- average headcount 50.

ORDER 34 dated 5 January 2011 to amend and complement OMFP 262/2007 to approve taxpayer registration forms (Official Gazette 21/2011)

The Order amends the form, "Return for fiscal registration/for mentions (*amendments*) for legal entities, associations and other entities which are not legal persons (010)," code 14.13.01.10.11/1 and instructions.

We remind that form 010 is used to declare/amend fiscal obligations included in the taxpayer fiscal status ("*vector fiscal*"). Types of fiscal obligation categories to declare which are also included in the entity's fiscal status ("*vector fiscal*") are:

- VAT;
- tax on profit;
- tax on micro enterprise revenue;
- excise taxes;
- tax on crude oil from national production;
- income tax on salary and on revenue assimilated to salaries;
- contribution to social health insurance;
- contribution to unemployment insurance;
- contribution to insurance for work accident and occupational disease;
- contribution to social insurance (*pension*);
- contribution to Fund to guarantee payment of salary liabilities;
- medical leave contribution and health insurance allowance;
- mining royalties;
- oil royalties.

ORDER 30 dated 14 January 2011 to amend and complement appendix 2 to ANAF Presidential Order 75/2010 to approve model and content of form (301), "Special VAT return" (Official Gazette 54/2011)

The Order introduces additions to instructions to complete form 301, "Special VAT return," in case of EU acquisition of means of transport which are not considered to be new.

The Special VAT return (form 301) is submitted by:

- registered entities under the scope of VAT as per article 153¹ of the Fiscal Code (special registration only valid for EU acquisition of goods and services and EU supplies) but are not registered and do not need to be as per article 153 of the Fiscal Code (normal registration under the scope of VAT).
- any entity which is not registered and does not have to as per article 153 of the Fiscal Code, irrespective of whether

or not it is registered as per article 153¹ of the Fiscal Code and which makes EU acquisitions of a brand new means of transport for which exigibility of VAT occurs during the period to report, including amounts on invoices received after partial advance payment for EU acquisition of goods.

- taxable entities which are not registered and do not have to register as per article 153 of the Fiscal Code and non taxable legal entities, irrespective of whether or not they are registered as per article 153¹ of the Fiscal Code, which make EU acquisitions of goods subject to excise taxes for which exigibility of VAT occurs during the period to report, including amounts on invoices received after partial advance payment for EU acquisition of goods.

ORDER 13 dated 10 January 2011 to approve model and content of form 096 "Return for mentions regarding de-registration from the scope of VAT for taxable entities registered under the scope of VAT as per article 153 of the Fiscal Code, which, during a calendar year, have not exceeded the exemption ceiling set at article 152 of the Fiscal Code" (Official Gazette 25/2011)

The Order approves model and content of form, 096 "Return for mentions (*amendments*) regarding de-registration from the scope of VAT for taxable entities registered under the scope of VAT as per article 153 of the Fiscal Code, which, during a calendar year, have not exceeded the exemption ceiling set at article 152 point (1) of the Fiscal Code," code 14.13.01.10.12. In this case, form 096 is prepared by taxable entities which want to de-register from the list of entities registered under the scope of VAT.

Exemption ceiling is Euro 35,000 which is calculated in RON by applying the NBR exchange rate when Romania joined the EU and rounded to the upper thousand, i.e. RON 119,000.

Form 096 is submitted with tax authorities on 20 January at the latest.

INSTRUCTION 1 dated 3 January 2011 regarding the reference interest rate of the National Bank of Romania (NBR) for the month of January 2011 (Official Gazette 3/2011)

For the month of January 2011, the NBR reference interest rate is 6.25% per annum.

ORDER 1865 dated 17 December 2010 regarding INTRA-STAT thresholds and data collection of EU trade of goods in 2011 (Official Gazette 36/2011)

For 2011, the present INTRASTAT thresholds are unchanged:

- RON 900,000 for intra-community shipment of goods.
- RON 300,000 for intra-community introductions of goods into Romania.

Economic operators must compare these thresholds separately for outflows (shipments) and inflows (introductions) against 2010 intra-community trade of goods. If either or both threshold (s) were exceeded in 2010, the economic must submit INTRASTAT statistical statements starting January 2011.

When year-to-date 2011 values exceed INTRASTAT thresholds, submission of INTRASTAT statements is mandatory, starting the month the thresholds are exceeded.

ORDER 55 dated 11 January 2011 regarding inflation index used to update quarterly advance payments of annual tax on profit (Official Gazette 47/2011)

For the fiscal year, the inflation index used to update quarterly advance payments of annual tax on profit is 3.2%. It only applies to banks which apply the regime of quarterly advance payments.

ORDER 1 dated 5 January 2011 to complement the Classification of occupations in Romania - COR (Official Gazette 27/2011)

REMINDER – Which exchange rate to use

Scope	Exchange rate
Ceiling for intra-community acquisitions of Euro 10,000, applicable during a calendar year	3.3817 RON/Euro (in force as of the date Romania joined the E.U.)
Taxable entity established in Romania which realizes turnover exceeding the ceiling of Euro 35,000 during 2011 must register under the scope of VAT 10 days after the end of the month when the ceiling was reached/exceeded	3.3817 RON/Euro (in force as the date Romania joined the E.U.)
Ceiling of Euro 100,000 to set the fiscal period regarding VAT	4.2848 RON/Euro (in force as at 31 December of the previous year)
Ceiling of Euro 35,000 regarding distance sales	3.3817 RON/Euro (in force as the date Romania joined E.U.)
Non-profit organisations, trade unions and employer organisations are also exempted from corporate tax for revenue derived from economic activities obtained during a fiscal year up to the equivalent in RON of Euro 15,000, but no more than 10% of total income exempt from corporate tax	4.2099 RON/Euro (average exchange rate for 2010)
To determine the limit of deductibility for the following expenses : <ul style="list-style-type: none"> • employer contributions to optional pension funds has a limit of Euro 400 per annum per employee • voluntary health insurance premiums up to a limit of Euro 250 per annum per person • fees and contributions to non-governmental or professional associations (in the limit of Euro 4,000 per annum) 	<ul style="list-style-type: none"> • NBR exchange rate for date expense was recorded • NBR exchange rate for date expense was recorded • NBR exchange rate at end of business day prior to payment date
Income tax Translation of employee contributions withheld in RON into Euro for optional pension funds to check compliance with the annual ceiling of Euro 400	NBR exchange rate for last day of the month for which payroll is computed.
Revenue derived from independent activities To determine the limits of deductibility for contributions to optional pension funds topped at Euro 400 per annum per person as well as voluntary health insurance premiums up to a limit of Euro 250 per annum per person	4.2099 RON/Euro (average exchange rate for 2010)
Excise taxes, special tax on automobiles, tax on crude oil from domestic production	4.2655 RON/Euro (in force as at 1 st October 2010, published by the E.U. Official Gazette)

DECISION 50 dated 28 January 2011 to approve Implementation Norms of provisions of Law 416/2001 regarding minimum guaranteed income (Official Gazette 76/2011)

ORDER 59 dated 11 January 2011 to approve methodological Norms for preparation and submission of annual financial statements for public institutions as at 31 December 2010 (Official Gazette 46/2011)

ORDER 26 dated 12 January 2011 to approve Instructions regarding online submission of returns regarding the state of acquisitions and deliveries of excisable products using EMCS-RO STOCURI application (Official Gazette 76/2011)

ORDER 88 dated 17 January 2011 to amend and complement Ministry of Environment and Water Management Order 658/2006 to approve forms used in collecting receivables of the Environment Fund (Official Gazette 67/2011)

The Order introduces 2 new forms regarding the Environment Fund:

- Decision regarding two additional Environment Fund taxes;
- Communication regarding extinction of liabilities to the Environment Fund which have been settled.

ORDER 11 dated 7 January 2011 to approve model and content of the form, "Statement regarding the status of the contracts concluded and/or terminated with economic operators which introduce packaged items and merchandising packaging into the domestic market," as well as instructions for preparation and submission (Official Gazette 36/2011)

ORDER 95 dated 19 January 2011 to approve methodological Norms for the National Electronic System for online payment of taxes using a bank card (Office Gazette 74/2011)

DECISION 7 dated 4 January 2011 regarding implementation of universal service in the field of electronic communications (Official Gazette 39/2011)

The Decision rules implementation of universal service in the field of electronic communications by establishing conditions and designation procedures for providers of universal service as well as by setting the compensation mechanism to determine net cost for providing of services in the sphere of universal service.

Services included in the sphere of universal service which are the object of the present Decision are:

- supply of access to a public telephone network, at a fixed point;
- access to fee-based public telephones;
- information service to subscribers and making list of subscribers available.

The following can be designated as a provider of universal service:

- persons who have both the quality of a provider of public electronic communication network and telephone services for the public;
- providers of electronic communication services for the public.

REMINDER – Interest and royalties obtained by non residents

Starting 1st January, the new exemption applicable to interest and royalties obtained in Romania by legal entities which are resident in the other member EU States or in an EFTA State (Iceland, Liechtenstein, Norway) apply. Such revenues are not subject to withholding tax if the actual beneficiary of interest and royalties holds at least a 25% interest in the Romanian legal entity for an uninterrupted period of at least 2 years, criteria being assessed at the date interest or royalties are paid. The same rule applies to a permanent establishment of another EU member State or of an EFTA State.

REMINDER – "Inventory statement" of closing balances of contributions for medical leave and health insurance allowances

As per Ordinance 117/2010, employers must submit to the social health insurance houses on or before 15 February 2011 an "inventory statement" of closing balances as at 31 December 2010 of contributions for medical leave and health insurance allowances which are not settled as at 31 January 2011, including additional related liabilities, by fiscal year.

The statement will also include amounts to recover from the Unique National Fund for social health insurance (FNASS) for which applications for refund were submitted on time but have not been received as at 31 January 2011.

Model and content of the statement will be approved by an common Order of the Ministry of Health and the President of the National Health Insurance House.

INFLATION RATE (source: www.inse.ro)

The National Institute for Statistics has published the inflation rate for 2010. The evolution of the last 11 years is presented below:

Year	2000	2001	2002	2003	2004
Inflation rate	45.7 %	34.5 %	22.5%	15.3%	11.9%
2005	2006	2007	2008	2009	2010
9.0%	6.56%	4.84%	6.3%	5.59%	7.96%

INFORMATION – Certification of annual profit tax return by tax consultant

As per provisions of article 83 paragraph (5) of OG 92/2003 Code of fiscal procedure, annual tax returns of a taxpayer which is a legal entity are certified by a tax consultant in the conditions of law, except for entities where an audit is mandatory.

Exception to the rule does not apply to taxpayers which opted to be audited even though an audit was not mandatory.

In its quality of member of the Chamber of Tax Consultants, APEX Team offers certification services for return(s) regarding 2010 profit tax (form 101).

REMINDER – Do not forget to request tax residence certificates issued in 2011 from your foreign business partners

The tax residence certificates issued in 2010 are valid for the first 60 days of 2011.

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, receivable, payable) denominated in foreign currency are valued at the NBR exchange rate in force on the last banking day of the month.

It 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 January 2011:

1 Euro = 4.2549 RON; 1 USD = 3.1182 RON;
1 CHF = 3.3041 RON; 1 GBP = 4.9516 RON

IMPORTANT – Finalising Quarter IV 2010 profit tax

According to a project to be published, tax on profit regarding the year 2010 is intended to be finalized as follows:

The split of the 2010 fiscal year into 2 periods (the first 3 quarters on one hand and Quarter IV on the other hand) is **only** made by the taxpayer who, during any of the first quarters of year 2010 was liable for and paid a minimum tax. Such a taxpayer would submit two 101 forms as follows:

- for the first 3 quarters of 2010, form 101 would be submitted on or before 25 February 2011;
- for Quarter IV 2010, another 101 form would be submitted, at the latest, on:
 - 25 February 2011 (where the taxpayer has opted for finalisation Quarter IV by this date and has not declared anything with respect to profit tax on form 100 pertaining to the month of December);
 - 25 April 2011 for cases where the taxpayer has declared profit tax pertaining to the month of December equal that of Quarter III 2010.

The taxpayer who was not liable and did not pay minimum tax during any of the first 3 quarters of 2010 (therefore, throughout these quarters, profit tax of more than the minimum tax has been posted) would submit a single profit tax return (form 101) as in the past. Deadline for submission of form 101 is the same as those mentioned above, i.e. 25 February if closing the financial year is finalised by this date, or 25 April if the taxpayer has declared a profit tax on form 100 pertaining to December equal to tax on profit for Quarter III 2010.

FEBRUARY 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 or termination, if any

At month end - do not forget

- To complete the journal ledger
- To complete the Fiscal evidence Register if closing year 2010 is finalised as at 25 February 2011
- 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 February 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 February last day to submit**

- Form 092 (*amendments*) to change VAT return periods from Quarterly to Monthly in case an EU acquisition of goods occurred in January 2011. Starting January 2011, VAT returns will be submitted monthly.

That Thursday 10 February is the last day to submit

- Return on collection of hotel tax

That Thursday 10 February is the last day to pay

- Hotel tax
- Advertising service tax

That Tuesday 15 February is the last day to submit

- INTRASTAT statement for January 2011 (submitted on-line)
- Recapitulative statement of EU Supplies/acquisitions/ services (form 390)* for January 2011;**
- "Inventory statement" of closing balances of contributions for medical leave and health insurance allowance**

That Friday 25 February is the last day to submit

- State budget liability return (form 100)*
- Return regarding social contributions, income tax and nominative list of insured persons (form 112)*;**
- Tax on profit return (form 101)* **pertaining to the first 3 quarters of 2010** (if the taxpayer has paid minimum tax during any of the 3 quarters in 2010);
- Tax on profit return (form 101)* **pertaining to the full year 2010** for:
 - o non profit organisations;
 - o taxpayers who derive most of their income from the cultivation of cereals, technical plants, tree husbandry and viticulture;
 - o taxpayers who HAVE NOT PAID minimum taxes during any of the first 3 quarters of 2010 as well as finalize and close the 2010 financial year before 25 February, thus finalizing 2010 profit tax (in such a case, nothing was declared with respect to Quarter IV 2010 on the State budget liability return – form 100 submitted on or before 25 January 2011);
- Tax on profit return (form 101)* **pertaining to Quarter IV 2010** for taxpayers who have paid during one of the first 3 quarters minimum tax and who finalise before 25 February 2011 closure of the 2010 financial year and implicitly finalize tax on profit for Quarter IV 2010 (in such a case, nothing has been declared in respect of Quarter IV 2010 in the State budget liability return – form 100 submitted by 25 January 2011). If so, two 101 forms will be submitted: one for the first 3 quarters of 2010 and the second for Quarter IV 2010;
- VAT return (form 300)*
- Special VAT return for VAT non payers (form 301)*
- Environment Fund Statement (except "ecotax");
- Application for use of a period other than month or quarter by taxable entities registered under the scope of VAT (form 306)
- Informative statement regarding delivery of goods and provision of services realized in 2010 (form 392A)
- Informative statement regarding delivery of goods, provision of services and acquisitions realized in 2010 (form 392B)
- Informative statement regarding income obtained from sale of tickets for international road transport of persons with Romania as point of departure in 2010 (form 393).

- Statement regarding subsidies or transfers from the State Budget, not regularised and not refunded within the legal time frame in 2010.

That Friday 25 February 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
- Final profit tax for taxpayers who, as at this date, have finalised closing of the 2010 financial year, for non profit organisations** as well as taxpayers who derive most of their income from the cultivation of cereals, technical plants, tree husbandry and viticulture
- Income tax on salary
- Tax on income from independent activities, withheld at source
- Tax on interest income
- Tax on investment income
- Tax on pension income
- Tax on income from prizes and gambling
- Tax on income from other sources
- Social security contribution
- Health insurance contribution
- Medical leave contribution and health insurance allowance
- Unemployment contribution
- Contribution to fund to guarantee payment of salary liabilities
- Contribution to work accident and occupational disease fund
- Contribution for non employment of disabled persons for employers with headcount over 50
- Contribution to Environment Fund (not "ecotax")
- Gambling tax

That Monday 28 February is the last day to submit:

- Fiscal forms (Form 210) afferent to 2010 with tax authorities and remittance of a copy in original to the employee**
- Annual informative return on income tax withheld on income from activities under withholding regime, by income beneficiary during year 2010 (form 205);
- Informative statement of interest income from bank savings accounts obtained in Romania by individuals resident in other EU member States, dependent or associated territories or any other country (OMEF 564/2007) – form 400;
- Annual return for taxation of Representative Offices.

That Tuesday 1st March is last day

- of validity of 2010 tax residence certificate based on which payments can be made to non-residents in 2011 as per provisions of the Treaty to avoid double taxation signed between Romanian and the respective State.

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.

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.

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)¹	10.5% (contribution base per employee capped at 5 average monthly gross salaries according to Budget for public social insurance, 5 x 2,022 = RON10,110) ¹ (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) ²	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 national collective bargaining for 2011-2014)	RON 670 for unqualified positions RON 770 for positions requiring High School RON 1,204 for positions requiring a University degree	
Luncheon voucher subject to income tax starting July 2010	RON 8.72	
Per diem (in Romania)		
Employees in the public sector	RON 13.00	
Employees in the private sector (x 2.5)	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% ¹
Contribution to health insurance	0%	0% ²
Contribution to unemployment insurance (<i>if applicable</i>)	0%	0.5% ³
Income tax		16% ⁴

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.



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ACCOUNTING AND PAYROLL
EXPERT TEAM

APEX Team includes qualified professionals able to provide a full range of accounting and payroll services. Our consultants are ready to share their knowledge and experience gained whilst working in Romania as consultants for one of the Big 4 international companies, having many international companies acting in a wide range of industries as clients.

The team includes chartered accountants (Romanian Chartered Accountants Body and also ACCA) specialised in accounting for business entities, as well as a group specialised in payroll administration on behalf of the client.

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

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



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