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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)

The Ordinance introduces amendments to four texts of law, mainly concerning the Fiscal Code.

Amendments to the Fiscal Code

We present the main amendments to the Fiscal Code which will enter in force 1st January 2012 unless otherwise stated.

DEFINITIONS

Independent Activities

Base dependent activity is defined as an activity carried out on the basis of a labour contract or another status set by law that the employee declares to the employer as his/her main occupation. If the person has several employers, he/she must declare which occupation is considered the main occupation to each employer.

This definition is important because it complements previous Ordinances regarding the definition of independent activities and subsequently non independent activities in the perspective of the possible requalification by tax authorities of activities as dependent activities with all employee and employer contributions this implies.

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 1st 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 set up a new legal entity being mandatory but with the advantages of limited liability.

The next APEX Team newsletter will address the treatment of such contracts regarding profit tax, income tax and local taxes.

PROFIT TAX

Declaration and payment of profit tax

Declaration and payment of profit tax continues to be quarterly, on or before the 25th of the month which follows the end of Quarter I, Quarter II and Quarter III.

At year end, the deadline for finalizing profit tax, submitting annual profit tax returns and paying profit tax is **25 March** of the subsequent year (previously 25 February or 25 April, respectively). By exception to this new provision, non-profit organisations and taxpayers which obtain most of their revenue from growing cereal, "technical" plants, tree culture and viticulture continue to submit their annual profit tax return and paying profit tax by 25 February of the subsequent year.

A new provision is **cancellation** of the regulation where taxpayers which had not finalized the determination of their annual profit tax as at 15 February had to pay a preliminary Quarter IV profit tax equal to its Quarter III profit tax by 25 January of the following year. Implicitly, the deadline for determination of profit tax is moved from 25 April to 25 March.

We mention that profit tax pertaining to the year 2011 is to be declared and paid as per provisions in effect through 31 December 2011.

Quarterly advance profit tax payments

Application of the regime of profit tax payment through quarterly advance payments followed by an annual adjustment for commercial companies is once again postponed, the new date for its entry in force being 1st January 2013 and will be optional. We remind that currently, only banks may apply this regime which was supposed to apply to all companies starting 2010, then delayed to 2012 and now, postponed until 1st January 2013.

The main advantage of this regime is to cancel mandatory computation of profit tax at each quarter

Contents:

- Profit tax: annual profit tax return due 25 March and no more special regulation regarding Quarter IV
- Quarterly advance payments for profit tax – starting 2013 and optional
- Employee fiscal forms cancelled 1st January 2012
- Independent activities: annual income return due 25 May
- Quarterly submission of form 112 if less than 3 employees and turnover up to Euro100,000 Euro as well as payment except if option exercised to keep monthly submission and payment
- All returns regarding withheld tax due end February
- Deadline for submission of recapitulative statement 390 is now 25th of month
- Local taxes: tax on buildings up to 40% if building not revalued
- Cancellation of penalties if principal and interest paid before 31.12.2011 and 50% reduction if paid before 30.06.2012
- Online submission of returns: submission date is date of receipt message transmitted by ANAF portal
- Settlement of fiscal liabilities: liabilities in principal by ageing order and afterwards additional fiscal liabilities
- Fine up to RON 5,000 for recapitulative statement 390 irrespective for both goods and services
- September 2011 NBR interest rate
- Obtaining form A1 to second an employee in the EU
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Taxpayers must wait until 2013 to opt for paying profit tax in quarterly advance payments followed by an annual adjustment

end, which means applying regulations for computing fiscal profit starting from accounting profit every quarter. As per the regime on paying profit tax through quarterly advance payments, a preliminary amount continues to be paid quarterly but this amount is based on prior year fiscal profit adjusted for inflation. Annual adjustment occurs upon preparation of the annual profit tax return and is the only time during the respective year that computation of fiscal profit starts from accounting profit, the outcome being profit tax to be paid after deduction of quarterly advance payments.

The regime of profit tax payment through quarterly advance payments is mandatory for banks and **will be optional starting 2013** for all taxpayers, with some exceptions set by law.

The profit tax payment regime of quarterly advance payments will consist of:

- an option to enter or exit the quarterly advance payment regime at inception of the fiscal year, by 31 January;
- the option is made for at least 2 consecutive fiscal years;
- taxpayers under the regime of profit tax payment through quarterly advance payments which post a fiscal loss for the first year of the mandatory 2 year period, pay quarterly advance payments on profit tax by applying the tax rate to the applicable current year quarterly accounting profit;
- taxpayers under the regime of profit tax payment through quarterly advance payments which benefited from profit tax exemption the previous year as per law and no longer benefit from these fiscal facilities for the year when quarterly payments must be determined and disbursed, will determine quarterly advance payments based on profit tax disclosed on the previous year profit tax return even if they were actually then exempted from its payment.

Banks which are set up during the year in progress or which post an annual fiscal loss will pay quarterly advance profit taxes which are determined by application of the tax rate to accounting profit for the quarter for which payment of an advance payment is to be made. This provision applies starting 2012 to banks for which the regime of payment of profit tax by quarterly advance payments already applies.

Exceptions – Taxpayers not be entitled to opt for payment of profit tax by quarterly advance payments

The categories of taxpayers which will not be allowed to opt for payment of profit tax by quarterly advance payments starting 2013 and for which a special regime for declaration and payment is established are the following:

- a) non-profit organisations which must declare and pay profit tax on economic activity annually, by 25 February of the year which follows the year for which profit tax is computed;
- b) taxpayers which obtain most of their income from growing cereal, "technical" plants, tree culture and viticulture which must declare and pay profit tax annually, by 25 February of the subsequent year;
- c) the following taxpayers must declare and pay quarterly profit tax because they are not allowed to exercise the option for quarterly advance payments:
 - o foreign legal entities and non resident individuals who carry out their activities through an association which is not a legal entity;
 - o foreign legal entities which obtained revenue from or in relation to real estate property located in Romania or from disposal of an ownership interest they held in a Romanian legal entity;
 - o resident individuals associated with Romanian legal entities for revenue obtained both in Romania and abroad from associations which are not legal entities.

Furthermore, the option available starting 2013 will be denied to the categories of taxpayers which were, during the previous year, under one of the circumstances mentioned below, and must compute and pay profit tax each quarter:

- taxpayers which posted a fiscal year loss at the end of the previous fiscal year;
- taxpayers which were subject to tax on the micro enterprise revenue and become subject to profit tax;
- taxpayers which are in temporary inactivity or which declare under own responsibility that no activity is carried out at registered headquarters or secondary establishments, as per legal provisions, with the Trade Register or with the Registry maintained by competent judicial authorities, if applicable
- newly set up taxpayers, but in this respect, taxpayers which register further to reorganisation as per law are not considered new taxpayers.

Specific regulations apply to reorganisation, merger, demerger as well as trans-border operations.

Legal entities which are dissolved without liquidation during a fiscal year must submit their annual profit tax return and pay profit tax by the end of the taxable period.

Legal entities which are dissolved through liquidation during a fiscal year must submit their annual profit tax return and pay profit tax based on a time period extended to the date financial statements are submitted with the Registry where registered upon set up as per law.

Tax allowed expenses

Starting 2 September 2011, the following expenses are expressly included in the category of expenses incurred for the scope of obtaining taxable income:

- expenses supported by economic operators regarding valuation/revaluation of tangible non-current assets which belong to the public property of the State or territorial administrative units and were remitted for administration or concession as the case may be, these expenses being incurred upon request of the head of the institution which own them;
- expenses supported by economic operators to register the State ownership right or territorial administrative unit ownership right to public assets received for administration or concession, as the case



may be, registration with cadastral registries or with entities in charge of real estate publicity, these expenses being incurred upon request of the head of the institution which own them.

INDIVIDUAL INCOME TAX

Changing tax residence

Amendments are introduced regarding changing tax residence in Romania and changing tax residence to another State.

We emphasize that, as per the provisions of article 7 paragraph (1) point 23 of the Fiscal Code, a resident natural person is any individual who meets at least one of the following conditions:

- has his/her domicile in Romania;
- the centre of his/her vital interests is located in Romania;
- is present in Romania for one or several periods which exceed a total of 183 days during any 12 consecutive month period which ends at the end of the respective calendar year.

As per amendments introduced by the present Ordinance, individuals who met the residence conditions per letter b) or c) set above for at least 1 year (previously, the condition was 3 consecutive years) are subject to income tax upon the income obtained, regardless of their provenance, both in Romania and abroad, starting 1st January of the following year.

For the year the person becomes a tax resident in Romania, he/she is only subject to income tax on income obtained in Romania.

The above mentioned provisions do not apply to individuals who are tax residents in States with which Romania has concluded a treaty to avoid double taxation, because the latter dispositions prevail.

An individual is deemed a tax resident or non tax resident for the entire calendar year. A change in tax residence is not allowed during the calendar year.

Romanian resident individuals with his/her domicile in Romania who proves his/her change of tax residence to a State with which Romania has not concluded a treaty to avoid double taxation is still liable for income tax on income of any nature, obtained both in Romania and abroad, during the calendar year when the change in tax residence occurred, as well as during the 2 subsequent calendar years.

Tax on salary income

The employee who has several employers must inform each employer which occupation he/she considers his/her main occupation. Deadline for payment of income tax withheld from employees by employers which submit the return regarding social contributions, income tax and nominative list of insured persons (form 112) on a quarterly basis is the 25th of the month after quarter end.

On 1st January 2012, fiscal forms are cancelled. However, the income payer must submit a return regarding income tax withheld on salary by the end of February of the following year. In addition, the income payer must issue, upon his/her request, a form in a format which is not standard but must include at least the following information to the taxpayer: taxpayer identification data, income obtained during the year, personal deductions from the tax base which were granted, income tax computed and paid income tax.

As for 2011 salary income, fiscal forms will continue to be submitted, the deadline for submission being 29 February 2012.

Tax on revenue from independent activities

In case of income derived from independent activities subject to income tax, 10% withheld as advance payment of income tax is computed after deduction of mandatory social contributions. Previously, the tax base was gross income without taking the individual's social contributions into account.

The **annual return regarding income derived from independent activities** is to be submitted by **25 May** of the year after the year when revenue was obtained (previously, deadline for submission was 15 May).

As for taxpayers who obtain income from abroad, they must submit their annual return by 25 May of the subsequent year (previously, deadline for submission was 15 May).

Taxpayers who obtained authors' rights as well as taxpayers under the tax quota regime who wish to opt for determination of the income as per the actual income and expense regime exercise the option by submitting a declaration of estimated revenue and not by filing an application as previously required.

Submission of the return regarding social contributions, income tax and nominative list of insured persons (form 112) and deadline for payment of contributions and income tax withheld

Starting October 2011, quarterly submission of the return regarding social contributions, income tax and nominative list of insured persons (form 112) is introduced for certain categories of taxpayers as well as quarterly payment of employer contributions and withheld employee contributions and income tax.

Quarterly submission consists of filing all three 112 forms which were prepared for each month of the quarter, by the 25th of the month after quarter end. The advantage for entities which benefit from this regime is in terms of cash flow.

We remind that the general rule is to make computations on a monthly basis, withhold income tax at the date when payment of income occurs and transfer it to the State Budget by the 25th of the following month. The same rule applies to insured persons' contributions.

Unless the option to remain under monthly submission and payment regime is exercised, the quarterly regime applies starting October 2011 to the following categories of taxpayers:

- legal entities subject to profit tax which recorded total revenue of up to Euro 100,000 and had average headcount of up to 3 employees (3 excluded) during the previous year;



29 February 2012 will be last time an employer submit employee fiscal forms



**Quarterly submission
of form 112
if less than 3
employees
and turnover up to
Euro 100,000 as well
as quarterly payment
except if option
exercised to keep
monthly deadline**

- legal entities subject to tax on the micro enterprise revenue which had, during the previous year, average headcount of up to 3 employees (3 excluded);
- associations, foundations or other non-profit organisations which are legal entities - except public institutions - which had during the previous year average headcount of up to 3 employees (3 excluded);
- licensed individuals (PFA) and individual entrepreneurs as well as individuals who carry out a profession, and associations which are not legal entities formed between individuals which have staff employed on the basis of a labour contract as per law.

Average number of employees and total revenue are determined as per provisions of article 296¹⁹ points (1³) and (1⁴) of the Fiscal Code, i.e. the mathematical average number of employees as per forms 112 submitted each month during the previous year.

Option to continue to apply the monthly regime after 1st October 2011 ought to be submitted in paper format by 25 September 2011 included (see below Order 3154/2011 published in the Official Gazette on 23 September 2011). For 2012, the option for monthly submission must be submitted prior to 31 January 2012.

As for newly set up taxpayers (excepted PFA, individual entrepreneurs and individuals who carry out a profession as well as associations which are not legal entities formed between individuals), they can apply for the quarterly submission and payment regime if, upon tax registration, they declare that their estimated headcount will be less than 3 employees and their estimated turnover will not exceed Euro 100,000.

When a person is no longer an insured person during a quarter, the payer of salary income or of income assimilated to salary must submit form 112 by the 25th of the next month after the month the person ceased to be insured. Under these circumstances, the form(s) pertaining to the period which remains within the quarter is/are submitted by the 25th of the month after quarter end. In case termination of the quality of insured person occurs during the second month of the quarter, both the return regarding the first month of the quarter and the return regarding the second month of the quarter will be submitted, and only submission the return pertaining to the third month remains.

Instruction 406870/2011 issued by the Ministry of Public Finance and posted on ANAF website brings clarification for a unitary application of provisions of article 296¹⁹ of the Fiscal Code:

- deadline for payment of social contributions and income tax withheld remains the 25th of the month after quarter end even if, as per the above mentioned provisions, the taxpayer must submit in anticipation form 112 regarding the first or second month of the quarter if cases of discontinued insurance;
- to compute the average number of employees, only persons under labour contract must be taken into account, irrespective of whether full time or not;
- to change to the quarterly regime starting October 2011 for taxpayers which have not opted to keep the monthly regime is automatically carried out by tax authorities which inform the taxpayer in this respect. Tax authorities check that conditions for application of the quarterly regime are met as per data included in the financial statements as at 31 December 2010. For taxpayers which have not submitted financial statements, the monthly regime remains.

Declarative obligations for payers of income subject to withholding tax

Payers of income subject to withholding tax must submit the return regarding computation and income tax withheld for each beneficiary of such income during the previous year (form 205) to tax authorities by the **last day of February** of the subsequent year. Thus, the end of February becomes only deadline for all forms due payers of income subject to withholding tax. Previously, some paid income was declared by the end of February and other income, by 30 June.

TAX ON NON RESIDENT INCOME

Tax on non resident income – annual return regarding withheld tax

Annual return regarding computation and income tax withheld for each non resident beneficiary of such income during the previous year must be submitted by the **last day of February** of the next year. Previously, deadline for submission of this return was 30 June.

VALUE ADDED TAX (VAT)

Generating event regarding provision of services

The generating event regarding provision of services which imply successive settlements or payments such as building and assembly services, consultancy, research, expertise and other similar services occurs at the date the activity reports and other similar statements are issued based on which rendered services are disclosed or as per contractual provisions at the date of acceptance of these services by the beneficiary.

As per new provisions, starting 5 September 2011, the possibility to wait 1 year before charging these services is abrogated.

Simplification measures

Article 160 (2) a) regarding application in the Romanian territory of simplification measures for waste is reworded and detailed.

Thus, starting 5 September 2011, reverse tax applies to domestic supply of the following categories of waste:

- supply of ferrous and non ferrous waste, waste of recyclable materials and recycled used materials of paper, cardboard paper and cardboard, textile material, rubber and plastic, broken glass and



glass;

- supply of the above mentioned materials after processing by operation of cleaning, polishing, selecting, cutting, fragmenting, pressing or converting into ingot.

Deadline for submission of recapitulative statement (form 390)

Deadline for **submission** of the monthly recapitulative statement of EU Supplies/acquisitions/services (form 390) has been postponed from 15th to **25th of the subsequent month**. Accordingly, the 25th becomes the only deadline for submission of all fiscal returns. This is true because the deadline for submission of the recapitulative statement pertaining to August 2011 submission was 25 September 2011.

EXCISE TAXES

Several amendments are introduced in the "Excises" Chapter of the Fiscal Code.

LOCAL TAXES

Tax on buildings

Taxes on buildings increase significantly in cases where buildings have not been revalued.

Thus, in the case of a building which has not been revalued, the rate of local tax is set by the local Council as follows:

- between 10% and 20% for buildings which have not been revalued during the previous 3 years prior to the fiscal year local tax refers to;
- between 30% and 40% for buildings which have not been revalued during the previous 5 years prior to the fiscal year local tax refers to.

The tax rate applies to the gross value of the building as disclosed in accounting records by legal entities through the end of the month when the first revaluation occurred. By exception, for buildings fully depreciated as per law, the tax rate is the standard rate, i.e. 0.25% and 1.50%.

The tax rate for buildings aimed for tourism which are not used during a calendar year is set by decision of the local Council at a minimum of 5% of the gross value of the building. The buildings aimed for tourism where building is in progress under the building authorisation for a validity period in progress do not fall under these provisions if work has started within the 3 months of the date building authorisation was issued.

Evidence regarding buildings

Declaration of building values with regard to local taxes to local administrative units is not conditioned on registration with cadastral registries or with entities in charge of real estate publicity.

Declaration of building values for the purpose of the registration in the evidence of local public administration authorities for subsequent taxation is a legal obligation for the taxpayer which owns this building even if the building had no authorization to build.

For both individuals and legal entities, buildings built as per provisions of Law 50/1991 regarding authorisation for realisation of building work, the date when building ownership is deemed received as follows:

- a) for the buildings entirely built prior to expiry of the period set per the authorisation to build, the date the statement of receipt (of property) are prepared but no later than 15 days after the effective completion of work;
- b) for buildings entirely built within the timeframe set per the authorisation to build, at completion date established on the building authorisation form with the obligation to prepare the statement of receipt in the timeframe set by law;
- c) for the buildings where work is not completed by the date set in the building authorisation form and for which application for an extension of the building authorisation was not submitted in the conditions of law, at expiry date of the timeframe set in the building authorisation form and only for the realized built area with the base structure elements, meaning walls and roof. The statement of receipt is prepared at expiry date of the timeframe set in the building authorisation form and the status of the work is disclosed as well as the realized built area, and tax on buildings is calculated in proportion to this built area.

Other amendments regarding local taxes

Provisions as per which disposal of any plot of land, building or means of transport cannot be made before the seller settles any liability towards local authorities are abrogated on 17 September 2011. However, the Code of Fiscal Procedure keeps the provisions according to which the taxpayer which disposes off a plot of land, a building or a means of transport must present a fiscal certificate proving settlement of all fiscal liabilities.

Tax on buildings and tax on related land are reduced by 50% for assets which are located long the Black Sea and belonging to legal entities if they are used in the scope of rendering tourism services for at least 6 months during a calendar year.

The possibility of a local Council is introduced to grant reduction in tax to owners of flats in apartment buildings used for lodging in case of rehearsal at their own expense or a reduction in tax for at least 7 years based on minutes drafted upon completion of work where performance of work was recommended by an energy auditor in the certificate regarding energy performance or in the energy audit report, if applicable. The local Council can also grant a building tax exemption for a period of 5 consecutive years to owners which performed work in the conditions of Law 153/2011 regarding measures to enhance architectural and environmental quality of buildings. Such exemptions and reductions can be granted starting 1st October 2011.



**Submission of
Recapitulative
statement regarding
EU supplies
acquisitions and
services (form 390) is
now 25th of month,
but be aware of fines**



Hotel tax

The hotel tax levied on hotel accommodation fee is 1% per night (previously, it was between 0.5% and 5%).

REGISTRATION WITH OF CONTRACTS CONCLUDED WITH NON RESIDENTS TAX AUTHORITIES

Up to now, only Romanian legal entities had to register contracts concluded with foreign legal entities or non resident individuals with tax authorities. As per the new provision, this obligation also applies to beneficiaries which are permanent establishments in Romania of foreign legal persons or Romanian individuals which are the beneficiaries of services rendered in Romania with the nature of activities of building work, assembly, supervision, consultancy, technical assistance and any other similar activity.

Introduction of a regime regarding cancellation or reduction of penalties

Penalties on past due fiscal liabilities as at 31 August 2011 can be cancelled or reduced as follows:

- late payment penalties are cancelled if the fiscal liabilities in principal as well as related interest are settled on a voluntary basis or by netting prior to 31 December 2011;
- late payment penalties are reduced by 50% if the fiscal liabilities in principal as well as related interest are settled on a voluntary basis or by netting prior to 30 June 2012.

In the case set at a), the whole or part of fiscal administrative acts or execution titles by which additional fiscal liabilities were set are cancelled whether challenged or not. These provisions also apply to cases set per item b) in the percentage of 50% of the additional fiscal liabilities which represent related penalties pertaining to fiscal liabilities settled by payment or netting.

Amendment of Emergency Government Ordinance 29/2011 regarding ruling granting instalment payments

Complements and amendments to OUG 29/2011 (presented in APEX Team newsletter no. 3_2011) are introduced as follows:

- Payment by instalment is not granted for fiscal liabilities set by fiscal administrative act which, at date of issue of the fiscal certificate, are suspended in the conditions of article 14 or 15 of Law 554/2004 regarding administrative litigation. In the case where suspension of execution of the fiscal administrative act ends after communication date of the decision regarding instalment payment, the fiscal liabilities to be paid are communicated to the taxpayer via a payment request.
- In the case when, during the time period between date of issue of the tax certificate and date of communication of the decision regarding instalment payments, the taxpayer made payments to tax authorities with respect to types of fiscal liabilities which form the object of the decision regarding instalment payments, fiscal liabilities which are due in this period are settled first and afterwards the fiscal liabilities included on the tax certificate.
- The guarantee percentages requested by ANAF are amended. Subsequently, constituted guarantees must cover amounts for which payment by instalment is granted, interest due for the instalment period as well as an additional percentage of up to 32% (previously 40%) of the amounts in which payment are made by instalment depending on the duration of the instalment period, as follows:
 - for an instalment period between 13 and 24 months, the percentage is 8% (previously 10%);
 - for an instalment period between 25 and 36 months, the percentage is 6% (previously 20%);
 - for an instalment period between 37 and 48 months, the percentage is 24% (previously 30%);
 - for an instalment period between 49 and 60 months, the percentage is 32% (previously 40%).
- A separate article regarding "Postponing payment of penalties for late payment" is introduced. Thus, for the period of payment by instalments, penalties for late payment pertaining to fiscal liabilities with payment by instalments are postponed by a decision which is communicated to the taxpayer at the same time as the decision regarding payment by instalments. Guarantees must also cover penalties for late payment as well as additional liabilities for late payment for which payment is postponed.

When payments by instalment are respected and are completed as per instalment schedule, penalties for late payment as well as additional liabilities for late payment which payment was postponed are cancelled by a decision which is communicated to the taxpayer at the same time as the decision regarding completion of payment by instalments.

Loss of validity of instalment payment schedule triggers end of validity of postponement in payment of penalties for late payment as well as for additional liabilities for late payment.

If the taxpayer intends to pay instalments set in the instalment payment schedule in advance, tax authorities must be informed. In case of partial payments, tax authorities inform the taxpayer prior to the due date for the next instalment payment as set in the instalment payment schedule regarding settlement of the amount which was paid in respect of the new approved instalments.

Amendment of Government Emergency Ordinance 64/2009 regarding financial administration of structural instruments with the purpose of convergence

The Ordinance introduces complements to OUG 64/2009, the main one being regulation of the procedure regarding recovering amounts granted as pre-financing and not yet documented by expense reports.

ORDER 3154 dated 19 September 2011 to approve the model and content of form, "Declaration regarding option for monthly submission of the return regarding social contributions, income tax and nominative list of insured persons" (Official Gazette 677/2011)

The Order published in the Official Gazette on 23 September 2011 approves the model and content of the form filed by taxpayers which meet the criteria for changing submission of form 112 to a quarterly basis, as per provisions of OG 30/11 presented in this newsletter and which opt to continue filing the re-



Cancellation of penalties

if fiscal liabilities in principal and interest are paid before

31 December 2011



turn regarding social contributions, income tax and nominative list of insured persons (form 112) each month.

To continue submitting form 112 on a monthly basis after 1st October 2011, the option form had to be submitted on or before 25 September 2011.

The same form is due by 31 January 2012 for taxpayers which meet the criteria to submit quarterly form 112 as at 31 December 2011 but wish to continue to submit form 112 monthly.

ORDINANCE 29 dated 31 August to amend and complement Government Ordinance 92/2003 – Code of Fiscal Procedure (Official Gazette 626/2011)

The Ordinance introduces amendments to the Code of Fiscal Procedure applicable starting 17 September 2011 except for some provisions which enter in force 1st October 2011 and others on 1st January 2012.

We mention below the main provisions and point out that where date of entry in force is not stated, it applies starting 17 September 2011 (15 days after publication at the Official Gazette).

Tax registration certificate

Time frame for issue of the tax registration certificate is reduced from 15 to 10 days starting date of application for tax registration.

Fiscal body in charge of administering the taxpayer

Clarification is provided in case of change of the tax body in charge of administering the taxpayer. Thus, it is mentioned that in case of change of fiscal domicile, the territorial competence is granted to the new fiscal body starting date of change of fiscal domicile. However, in the case where a fiscal procedure is in progress, except for procedure for forced execution, the fiscal body which started the procedure is in charge until its completion.

Submission of returns online

Date of submission of returns by remote means of transmission to the e-Romania portal is the date of registration of the returns on the portal as mentioned in the electronic message transmitted by the data management application, under condition of validation of the content of the return. Previously, submission date was validation date of the return.

Submission of tax returns which result from a taxation decision

The taxpayer may submit, within 60 days starting communication date of a taxation decision where fiscal liabilities are set ex officio, a tax return for fiscal liabilities which represented the object of this decision. Under these circumstances, the taxation decision is cancelled by tax authorities at submission date of the tax return.

Prescription

Tax returns can be adjusted by submitting an adjusted tax return before expiry of the prescription period as often as the taxpayers finds an error in the initial tax return.

The prescription period is also interrupted in the following cases:

- at submission date by the taxpayer of a tax return after expiry of the legal deadline for its submission;
- at the date the taxpayer adjusts the tax return or performs a voluntary act of recognition of the tax it owes.

Settlement of fiscal liabilities

The order in settling fiscal liabilities is amended: **fiscal liabilities in principal by aged due date** are settled **first followed by additional fiscal liabilities** by ageing date. Until 1st October 2011 when this new provision enters in force, settlement was made by ageing irrespective of whether it regarded principal or additional liabilities.

Document verification

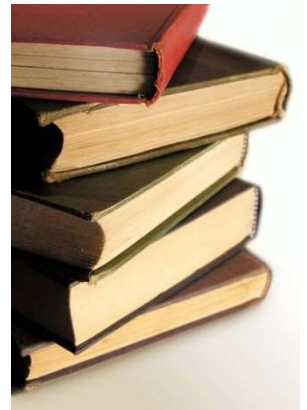
The possibility to perform a document verification is introduced. As per this procedure, tax authorities check documents they have and if discrepancies are noticed in respect of data communicated by the taxpayer, a request for clarification is made.

If within 30 days starting date of request, the taxpayer has not come to the tax authorities to clarify the discrepancies or the documents provided are not sufficient to clarify the tax position, tax authorities issue a decision to set additional fiscal liabilities or takes necessary measures for compliance with legal provisions.

Completion of tax inspection and tax inspection report

New provisions are established:

- tax authorities prepare a tax inspection report in draft;
- at the date and time communicated to the taxpayer, considered date of end of the tax inspection, this draft is presented to the taxpayer;
- within 3 days, the taxpayer can express in writing its point of view with respect to the findings of the tax inspection;
- the tax inspection report includes findings of the tax inspection as well as the tax authority's opinion regarding the taxpayer point of view;
- the final tax inspection report and the taxation decision are transmitted with 30 days starting date of end of the tax inspection.



**Collection will settle
fiscal liability
principal first, by
aged order and
additional fiscal
liabilities afterwards**



Priority in the means of communication of fiscal administrative acts

Priority is set in the means of communication of fiscal administrative acts. Thus, priority is given to transmission by registered mail with confirmation of receipt. In case this modality of communication is not possible, it is used as means of communication, either remittance of the fiscal administrative act to persons duly empowered with tax authorities, appearance at tax authority office of the taxpayer or its representative if remittance of the fiscal administrative act is thus ensured under signature, either by fax, email or any electronic means of remote transmission if the transmission of text and confirmation of its receipt are thus ensured.

It is only when the above mentioned means of communication have failed that publicity as a means of communication may then be used.

These amendments are further to Decision 536 dated 28 April 2011 of the Constitutional Court to admit as unconstitutional provisions of article 44 point 3 of Government Emergency Ordinance 92/2003 – Code of Fiscal Procedure which refers to means of communication of fiscal administrative acts, tax authorities tending to use communication by publicity without having previously used the other methods, a practice that the Constitutional Court assessed as contradictory to the Constitution (this Decision was presented in APEX Team Newsletter no. 8 _2011).

It is expressly stipulated that a fiscal administrative act which has not been communicated as per the above mentioned means of communication cannot be used against the taxpayer and produces no legal effect.

Registry of inactive/reactivated taxpayers

A Registry disclosing taxpayers which were declared inactive and well as reactivated taxpayers is set up. A taxpayer which was declared inactive is reactivated if all the following conditions are met:

- all declarative obligations set by law are fulfilled;
- all fiscal liabilities are settled;
- tax authorities have checked that the taxpayer was operating at its declared fiscal domicile.

Individual anticipated fiscal solution

Time frame for issue of an individual fiscal solution increases from 45 days to 3 months.

Tax certificate

In the tax certificate, the amounts that the taxpayer must collect from public authorities further to contracts it concluded with them may also be disclosed in the tax certificate.

Insolvency

Until date of entry in force of this provision, the taxpayer against whom an insolvency procedure was opened was not subject to interest and penalties for late payment starting inception date of the procedure. Starting 17 September 2011, interest and penalties for late payment are due as per the provisions on the insolvency procedure.

Cancellation of outstanding fiscal liabilities

Outstanding fiscal liabilities as at 31 December which are less than RON 40 are cancelled (previously, the ceiling was RON 10). It is stated that this ceiling applies to total fiscal liabilities which are due by the taxpayer and not settled.

Infringement and fines

The fine for non submission by individuals of their income return by the date due increases from RON 10 – RON 100 to RON 50 – RON 500.

The most important modification regards infringement regarding the recapitulative statement of EU Supplies/acquisitions/services (form 390). Until 17 September 2011, only non submission of EU supplies or acquisitions of goods was punished. Corrections made by submission of adjusted returns as well non declaration of EU services were not subject to fines.

As per the new provisions, infringement regarding the **recapitulative statement (form 390)** regarding **goods** as well as **services** are punished by:

- a fine from RON 1,000 to RON 5,000 for non submission of the recapitulative statement by due date (i.e. the 25th of the next month);
- a fine from RON 500 to RON 1,500 in case of submission of an incorrect or incomplete recapitulative statement.

If the taxpayer pays the fine within 48 hours, it benefits from a 50% reduction.

The following exceptions are stipulated:

- the entities which adjust the recapitulative statement before deadline for its submission are not punished if this error was not noticed by tax authorities before its adjustment;
- the persons who adjust the recapitulative statement after deadline for its submission are not punished if the adjustment is due to a fact for which the taxable person is not liable.

ORDINANCE 25 dated 31 August 2011 to amend article 7 of Government Ordinance 75/2001 regarding organisation and operation of the fiscal file (Official Gazette 628/2011)

The Ordinance amends article 7 of OG 75/2001, which refers to withdrawal of facts which were disclosed in the fiscal file.

Subsequently, facts which were mentioned in the taxpayer fiscal file are withdrawn under one of the following circumstances:



New fine for non submission, error or adjustment of statement 390 and also for services



- a) committed facts are no longer punished by law;
- b) a judicial rehabilitation enacted by judicial decision or a rehabilitation by law occurred;
- c) committed facts disclosed in the fiscal file were punished as infractions and facts of the same nature have not been committed during 5 years starting the date when the last act by which such facts were punished is final;
- d) committed facts disclosed in the fiscal file were punished as contraventions, except for facts set at letter e) and facts of the same nature as those set at article 2 have not been committed for 1 year starting the date when the last act by which such facts were punished is final and under the condition that the amount of fines has been settled. In case when the amount of fines has not been paid within this period, withdrawal of the disclosure in the fiscal file occurs at settlement date of the fine or after 5 years starting the date when the last act by which such facts were punished is final if the fine was not paid;
- e) committed facts disclosed in the fiscal file were punished as infringement to the legislation regarding excisable products and facts of the same nature as those set at article 2 have not been committed during 5 years starting the date when the last act by which such facts were punished is final;
- f) outstanding fiscal liabilities have been settled by use of the taxpayer responsibility with the debtor which was declared insolvent or was insolvent. Date of withdrawal from the fiscal file is the date when fiscal liabilities were settled but not before 1 year starting date of communication of the decision of the fiscal body in charge, which is final in respect of administrative or judicial means of challenging it. In case fiscal liabilities have not been settled within 5 years starting date of communication of the decision, withdrawal of the disclosure from the fiscal file occurs at expiry of this period;
- g) the taxpayer which was declared inactive has been reactivated. Date of withdrawal of the disclosure from the fiscal file is date of reactivation of the taxpayer in case the latter has been declared inactive for the case set at article 78 point (5) letter a) of Government Ordinance 92/2003 – Code of Fiscal Procedure, republished, with its further amendments and complements or the date when the period of 3 months starting taxpayer reactivation date expires in the circumstances set at article 78 point (5) letter b) or c) of the Code of Fiscal Procedure;
- h) taxpayer death or deregistration.

ORDER 2513 dated 6 September 2011 to approve Central Fiscal Committee Decision 5/2011 (Official Gazette 651/2011)

By application of provisions of article 2 of Law 230/2004 to approve Government Ordinance 38/2004 to amend OG 57/2002 regarding scientific research and technological development and granting fiscal facilities to research and development entities:

- past due fiscal liabilities as at 31 December 2003, exempted from payment, recorded by research and development entities as tax allowed expenses are considered taxable income upon determination of the profit tax at the date exemption is granted;
- the date when payment exemption is granted is the date of issue of the decision for approval of the public assistance by the Competition Committee.

ORDINANCE 27 dated 31 August 2011 regarding road transport (Official Gazette 625/2011)

The Ordinance rules the framework for organisation and operation of road transport for persons and goods within Romania as well as related activities.

The Ordinance established the legal frame for direct application of provisions of (CE) Regulation 1071/2009 issued by the European Parliament and Council dated 21 October 2009 to set common norms regarding conditions which must be met to carry out the occupation of operator of road transport.

INSTRUCTION 28 dated 1st September 2011 regarding the reference interest rate of the National Bank of Romania (NBR) for the month of September 2011 (Official Gazette 622/2011)

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

DECISION 773 dated 27 July 2011 to amend and complement Implementation procedures for indirect methods to determine the adjusted taxable base, approved by Government Decision 248/2011 (Official Gazette 620/2011)

Implementation procedures for indirect methods to determine the taxable base of individuals are complemented with a risk analysis procedure. As per this procedure, selection of individuals subject to a prior audit on the basis of documents will be processed as follows:

- declared income is compared to cash flow as well as to the amounts of increase in the estate and to realized personal expenses;
- The risk of non declaration is assessed. The risk of non declaration represents the difference between declared the income declared by the taxpayer or the income payer on one hand and the personal fiscal position for the other hand;
- the minimum risk accepted by tax authorities is set. It is considered that there is a significant difference when estimated income calculated as per personal fiscal position exceed by 10% income declared by the taxpayer or the income payer and the difference exceeds RON 50,000;
- The list of persons who exceed the minimum risk is thus prepared;
- Proposals for performance of an audit on persons with prior tax inspection on the basis of docu-



**Tax inspection
procedures improved
for implementation**



ments are made in decreasing order taking into account the risk of non declaration and the amount of minimum risk accepted by tax authorities. If, based on information tax authorities have, tax authorities list the spouses, relatives and affiliations up to the fourth degree included, and these persons are proposed for a concomitant tax inspection.

REMINDER – Obtaining form A1 in the perspective of secondment of an employee in the EU

A person who has a paid occupation in a member State for an employer which usually carries out its activity in the same member State and **who is seconded to work there by his/her employer in another member State, continues to be subject to legislation of the first member State under the condition that the foreseeable duration of the secondment does not exceed 24 months** and he/she is not seconded to replace another person.

This derives from Regulation (CE) 883 dated 29 April 2004 of European Parliament and Council regarding coordination of social security regimes (European Gazette L166&200/2004) which entered in force 1st May 2010.

Form E101 to prove the quality of insured person was replaced by form A1 at that date.

Formalities to obtain form A1, in the perspective of secondments of one or several employees who will carry out temporary activity in another member State must be performed by the employer.

An application for form A1 should be submitted to the National House for Pension and Social Insurance (CNPAS, Str. Latina nr. 8, District 2, Bucharest Telephone: 021.316.91.11; 08 00 826 727) 30 calendar days prior inception of the secondment.

The following documents should be attached to the application:

- Trade register certificate regarding the company issued by the Trade Register (original and readable copy);
- extract of the Trade Register ("*certificat constatator*") regarding the status of the employer, issued during the current month (original);
- tax certificate issued by ANAF confirming the employer has no liabilities towards the State Consolidated Budget at the date of application for form A1 (original certificate). If the economic operator has subsidiaries, branches, or secondary offices ("work points"), the tax certificate will be issued by the authorities which collect social contributions for the employees the employer intends to second.
- certificate issued by territorial Labour Inspectorate (ITM) issued as per Government Ordinance 33/2002 where the number of employees as at the application date for form A1 is disclosed (original);
- the most recent financial statements of the commercial operator in Romania or from abroad, duly approved, audited and published as per legislation of the State where the commercial operator has its domicile/registered headquarters. The last financial statement/accounting report submitted with tax authorities are to be presented as well as the last 3 detailed trial balances signed and stamped (original and readable copy);
- statement under own responsibility issued by the employer which certifies turnover realized in Romania and turnover realized in the other EU member State during the previous year or since set up date, if applicable;
- commercial contracts in progress in Romania prior to the period for which applicable legislation is to be certified;
- commercial contracts in progress in Romania for the period for which applicable legislation is to be certified;
- contract/draft contract concluded between the Romanian employer and the EU member State employer where the employee will be seconded as well as its translation into Romanian by an authorised translator and certification by a public notary. The contract must disclose rights and obligations of the contracting parties, the assignment to be carried out by the secondee as well as the length of the contract (original and/or readable copy);
- Romanian identity card of the employee who will be seconded (readable copy).
- labour contract with the employee that the employer intends to second (original and readable copy or copy certified by ITM, if necessary) which certifies:
 - a) length of work to carry out abroad;
 - b) currency in which employee salary rights are paid as well as means of payment;
 - c) compensation in cash and/or in kind related to carrying out activity abroad;
 - d) climate conditions;
 - e) the main regulations regarding labour law in the respective State;
 - f) local customs where infringement may jeopardize the person's life, liberty or safety;
 - g) the conditions of repatriation of the employee, if any.
- certificate regarding pension contribution during the previous 12 months for each employee the employer intends to second as issued by the territorial Pension House (original);
- statement under own responsibility of the employer which certifies whether the persons who apply for form A1 received form E101 and E102, or not. If these persons benefitted from E102, a copy is to be provided;
- information regarding the employer: name of the company, object of activity, address of the registered headquarters, (street, number, city, postal code, telephone, fax, e-mail);
- object of activity as per CAEN codification;



Obtaining form A1 to second an employee in the EU is long and involved



- ☑ information regarding the employer in the other member State: name of the company, object of activity, address of the registered headquarters, (street, number, city, postal code, telephone, fax, e-mail); information regarding the activity which will be carried out in the other member State.

Among the conditions for the employer to obtain an A1 form, we mention:

- ☑ the number of employees for which form A1 is applied for cannot exceed half of the total number of company employees;
- ☑ the company must have carried out business in Romania during the 3-4 months prior to application for form A1. In practice, at least 25% of total turnover must have been realized in Romania;
- ☑ the inception date of activity mentioned in the employee labour contract for which form A1 is applied for must be at least one month before the secondment inception date;
- ☑ the labour contract of the employee for which a form A1 is applied for cannot be terminated on the initiative of the employer earlier than one month after the secondment ends.

When all the mandatory conditions are met, the CNPAS will issue form A1 within 25 working days after submission of the application file and will remit it to the employer.

For employees seconded in Belgium, Denmark, Germany, France, Netherlands, Austria, Finland or Sweden, CNPAS will transmit a copy of form A1 to the corresponding institutions in these States as mentioned in the A1 form. For the other member States, the employer obtains A1 form and remits it to the employee when he/she departs for his/her secondment.

Contacts: Service for International Relations (Directorate for Communication and International Relations)
Telephone: 0040.21.316.94.08

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 September 2011:

1 EUR = 4.3533 RON; 1 USD = 3.2195 RON; 1 CHF = 3.5703 RON; 1 GBP = 5.0281 RON

OCTOBER 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 complete the Tax Evidence Register (to disclose computation of fiscal profit/loss from accounting profit/loss)
- ☑ 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 October 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 Friday 7 October is the last day to submit

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

That Monday 10 October is the last day to submit

- ☑ Return on collection of hotel tax

That Monday 17 October is the last day to pay

- ☑ Hotel tax
- ☑ Advertising service tax



**Pay attention to tax
return submission
deadlines!!**



That Monday 17 October is the last day to submit

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

That Thursday 20 October is the last day to submit

- Special VAT return (form 301) * for Quarter III 2011 for taxable persons who are not established and render electronic services to non taxable persons

That Tuesday 25 October 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 September 2011;**
- Return regarding the state of acquisitions and deliveries of excisable products for the month of September 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 (including "ecotax");
- Statement to determine the tax representing a quarterly advance payment on tax on net annual taxable gains on gains realized during Quarter III 2011 upon disposal of securities other than shares and securities of closed companies (form 225);
- Statement of allocation between associates of income and expenses pertaining to Quarter III 2011 (form 104 to submit by associations which are not legal entities which are formed between taxpayers as set at article 13 letters c) and e) of the Fiscal Code).

That Tuesday 25 October is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole account – **State Budget**
 - o Profit tax for Quarter III 2011
 - o Tax on the micro enterprise revenue for Quarter III 2011
 - 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" included).

All forms mentioned above as well as guidance on their preparation may be downloaded from the Ministry of Public 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.



Pay attention to tax payment deadlines!!



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, i.e. 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 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% 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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Adding Value to Client's Business

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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.

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