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ORDER 155 dated 14 February 2012 to amend ANAF Presidential Order 101/2008 to approve model and content of forms used to declare taxes and contributions under self assessment or withholding regime (Official Gazette 119/2012)

Further to amendments introduced by Government Ordinance 2/2012 regarding deadline for submission of annual profit return (form 101), the Order aims to update information and instructions to complete form 101.

The order stipulates that an annual profit tax return is prepared and submitted annually by taxpayers subject to profit tax on or before 25 March of the subsequent year. The exception to this regulation concerns non-profit organisations and taxpayers which derive most of their revenue from growing cereal and "technical" plants, or from tree culture and forestry which must declare and pay profit tax by 25 February of the subsequent year, at the latest.

Taxpayers which opt for finalising the 2011 financial year prior to 25 February 2012 as per provisions of article 34 point (11) of the Fiscal Code in force through 31 December 2011, submit annual profit return for the year 2011 by 26 March 2012, at the latest, **without submitting form 100 for profit tax pertaining to Quarter IV 2011.**

Legal entities which, during the fiscal year, are dissolved by liquidation must submit an annual profit return and pay profit tax on or before the date financial statements are submitted to tax authorities under the subordination of ANAF. Legal entities which, during the fiscal year, are dissolved without liquidation must submit an annual profit return and pay profit tax by the end of the taxable period.

For other taxpayers, the Order does not provide clarification in respect of payment date for profit tax: the content of the Order refers to submission deadlines for form 101.

From unofficial information from Ministry of Public Finance (MFP), the deadline for payment of the final 2011 profit tax would be 25 March 2012. We are still expecting official clarification from MFP/ANAF.

ORDER 247 dated 17 February 2012 regarding unitary implementation procedure of article 52 of Law 571/2003 – Fiscal Code (Official Gazette 129/2012)

The Order establishes a unitary procedure for application of provisions of article 52 regarding taxation of income paid on the basis of written civil contracts concluded as per Law 287/2009 – Civil Code, republished, specifically, whether such income is taxable.

As per provisions of article 82 of Law 571/2003 – Fiscal Code with its further amendments and complements, individuals who carry out independent activities as licensed individual (PFA), individual entrepreneur and family enterprise as well as individuals who derive income from a profession, individually or under a form of association must make advance payments throughout the year. Periodic payments are set by tax authorities on the basis of estimated annual income or on realized net income of the previous year, as the case may be.

This Order rules that, starting 1st January 2012, taxpayers who obtain income where advance tax payments are withheld no longer pay advance tax payments to tax authorities for the categories of income ruled by article 52 point (1) letter a), b) and c) of the Fiscal Code, meaning:

- income obtained on the basis of civil contracts concluded as per Law 287/2009 – Civil Code for commissions, commercial agents and consignments as well as income obtained on the basis of legally eligible agent contracts concluded after 1st October 2011;
- income derived from civil contracts which have the same legal nature both before and after entry of the Civil Code into force;
- income from intellectual property rights;
- income from accounting and technical expertise activities as well as judicial and extrajudicial expertise.

Income upon which income tax is not withheld

The Order exempts from withholding tax the following types of income:

- income obtained by individuals who carry independent activities and who obtain revenue from renting items recorded as business assets;
- income of individuals who carry out independent or dependent activities obtained from disposal of the right to use items of own estate on the basis of a contract concluded between two Parties as per provisions of the Civil Code and to whom provisions of Chapter IV of Title III, "Income tax," of the Fiscal Code apply;

- income obtained from associations which are not designated legal entities or from legal entities which apply the principle of fiscal transparency for individuals or legal entities.

Payment deadlines

Income payers which have the obligation to withhold income tax representing advance payment must calculate, withhold and pay tax on or before the 25th of the month following the month income was paid. Tax which must be withheld is determined by applying a taxation rate of 10% upon gross income from which mandatory social contributions as per provisions of Title IX² of the Fiscal Code are deducted.

Income obtained by an individual from a collaboration with a legal entity as per Title IV¹ of the Fiscal Code does not generate a legal entity. Tax to be withheld is determined by applying the 3% tax rate set for taxation of micro enterprise revenue to income due the individual taking part in the collaboration. Payment deadlines for are the same as for micro enterprises, i.e. the 25th of the month which follows the quarter in which payment to the individual was made.

Source: DGFP Vâlcea

DECISION 50 dated 25 January 2012 to modify and complement Implementation Norms of Law 571/2003 – Fiscal Code, approved by Government Decision 44/2004 (Official Gazette 78/2012)

In APEX Team newsletter no.1 - 2012, Decision 50/2012, amendments to Implementation Norms of Fiscal Code was disclosed as presented in the Communiqué of the Romanian Government.

We revert to its provisions with a more detailed presentation of the amendments introduced in the Fiscal Code.

Centre of vital interest

The definition of a resident individual, the notion of "centre of vital interest" which is disclosed is clarified. Family of the resident individual, his/her spouse, child/children, dependent persons who arrive in Romania with the concerned individual, economic relations of the person (employed by a Romanian employer, involvement in business in Romania, bank accounts in Romania, debit/credit cards in Romania) as well as social relations of the person (member of a charity, religious organisation, participation in cultural or other type of activities) will be taken into consideration.

Registration of contracts with non residents

The expression, "any activity" regarding the type of activities carried out by foreign legal entities or individuals who are not resident in Romania for which mandatory registration of contracts on the basis of which respective activities are carried out with tax authorities is clarified. Subsequently, "any activity" means rendered services in Romania which generate taxable revenue.

In case a written contract is not concluded, documents which support the actual provision of services in Romania (statements of work, commissioning minutes, activity reports, feasibility studies, market studies, any other supporting document) are registered with tax authorities.

PROFIT TAX

Held Investments

To determine profit tax, revenue and expense which result from revaluation of investments held made as per accounting regulations is taxable revenue and tax deductible expense, respectively. Revaluations per accounting regulations are also recognized in the tax value of investments held.

Expenses

A new point is introduced in the Implementation Norms in respect of fiscal treatment of revenue and expenses representing contractual interest/penalties/damages and liability cancelled by addendum to concluded economic contracts. Thus, they represent taxable revenue and allowed expense, respectively upon determination of taxable profit under the condition that, as per the initial contract, they had the same fiscal treatment at the time they were recorded. At the time of cancellation of such interest/penalties/damages and liability, taxable profit of the fiscal period when respective revenue/expense was initially recorded will be adjusted.

Allowed expenses

In the category of expenses incurred in the scope of generating taxable revenues, the following is added:

- impairment of investments held is recorded in accordance with accounting regulations;
- set penalties within economic contracts concluded with resident/non resident persons (previously, only interest, damages and liability were mentioned);
- employee benefits in the form of capital instruments which represent **monetary income** at the time they are effectively granted to the beneficiary as per OUG 125/2011 if this is taxable income to the employee.

Disallowed expenses

In the category of non deductible expenses, the following suffer amendments:

- from expenses incurred for the benefit of shareholders, expenses representing the difference between market price and preferential purchase price are cancelled in cases where share related transactions are made in the context of a stock options plan;
- employee benefits in the form of capital instruments which are **shares** as per OUG 125/2011. These represent items similar to expense when employee benefits are effectively granted, if they represent taxable income to the employee.



Variations on the theme of center of vital interest followed by Questionnaires completed by individuals and finally, taxes due



- ☑ the value of tangible/intangible fixed assets in progress which will not be finalized and which are written off from accounting records upon a resolution/decision of termination or renunciation as well the net book value of investments made upon investments taken in concession, rented or under management in the case where contracts are terminated before due date, and the assets are not sold or scrapped.

Foreign fiscal losses

Fiscal losses posted by a permanent establishment located in a State which is not an EU or A.E.L.E member State or in a State with which Romania has not concluded a treaty to avoid double taxation are recovered only from taxable revenue posted by the respective permanent establishment. For application of these provisions, the expression "each source of revenue" is defined as being the State where the permanent establishment is located. Subsequently, losses posted by a permanent establishment located in one State cannot be netted with taxable profits of a permanent establishment located in another State.

Declaration and payment of profit tax

Taxpayers which may enter in the category of taxpayers which derive most of their income from growing cereal and "technical" plants, or from tree culture and forestry are listed in Government Decision 656/1997 to approve Classification of Activities of the National Economy (CAEN). Assessment of the proportion of taxpayer revenue from growing cereal and "technical" plants, or from tree culture and forestry is made at the end of each fiscal year and, in cases where most of the income was derived from sources other than those mentioned above, such a taxpayer will apply the quarterly regime of declaration and payment of profit tax starting the next fiscal year.

INCOME TAX

In the category of delegation and secondment expenses, transport and accommodation expenses are included as well as per diem for business travel in Romania and abroad set in the conditions of the law **or in the applicable labour contract.**

TAX ON INCOME OBTAINED IN ROMANIA BY NON RESIDENTS

Amounts paid to satellites operators on the basis of rental contracts which permit use of transmission capacity to several geographic areas do not represent royalties if no technology is transferred and if the client is not in possession of the satellite where transmission is performed but only has access to its transmission capacity. In case the satellite is rented by the owner, the amount paid will be considered rent of industrial, commercial or scientific equipment (which has the nature of payment of royalties). Similar treatment will be applied to amounts paid for rent or acquisition of cable capacity for transmission of energy, for communications or for pipes for transport of gas or crude oil.

Clarification is provided regarding the forms of organisation of legal entities for which provisions of the Agreement concluded between the European Community and Helvetian Confederation apply with equivalent measures to those set per Directive 2003/48/CE of the Council dated 3 June 2003 in respect of taxation of saving income in the form of interest income.

A non resident may also be considered resident of a State further to information received on the basis of information exchange initiated by a State which is Party in a treaty to avoid double taxation.

The tax residence certificate on the basis of which the provisions to avoid double taxation apply must certify the fact that the non resident who obtained revenue in Romania has been resident in the State which is Party in the treaty to avoid double taxation in the period when income was obtained and must include, in principal, identification data of the non resident as well as of issuing authorities. **It is ruled that the income payer is responsible for receipt of the tax residence certificate** or the document which certifies residence **in due time.**

Clarification is provided regarding the declaration obligations and tax payment for capital gains obtained by a non resident individual from disposal of securities irrespective of whether made by an intermediary or personally.

Remuneration received by non resident individuals for activities carry out as Director, founder or member of the Board of Directors of a Romanian legal entity are declared and subject to taxation as per legislation in force regarding income tax.

Clarification and complements are provided regarding refund procedures for excess tax withheld, in case tax withheld in Romania exceeds provisions of the treaty to avoid double taxation or, if applicable, European legislation. Thus, **the non resident will submit a refund application to the income payer in Romania which will refund the non resident with excess amounts withheld. Afterwards, in the scope of recovering from the State Budget the amounts which have been effectively refunded to the non resident, the income payer will submit to tax authorities one or several adjusted tax returns where cancellation of the fiscal liability will be disclosed and furthermore, an application for refund of tax paid in excess.** In case the non resident can no longer recover excess tax paid from the income payer, it will be recovered from the State Budget by the non resident or a representative. Refund procedures for excess tax paid in this latter case will be established by an ANAF Presidential Order.

It has been made possible for the income payer to also apply for a tax registration code (CIF) for non resident taxpayers with tax authorities. This procedure was introduced by Emergency Government Ordinance 2/2012 and in the Code of Fiscal Procedure. The application is made with tax authorities where the income payer has its fiscal domicile.

The informative statement regarding withheld and paid tax on income under withholding regime and on exempt income has been subsequently amended to enable Romanian authorities to grant a CIF to non resident beneficiaries of income.



**Income payer must
obtain tax residence
certificate of non
resident individual or
legal entity**



VAT

Constitution of fiscal group

Conditions of constitution of a fiscal group have been amended. Thus, taxable entities which wish to form a fiscal group after 1st January 2012 must be **administered by the same taxation authority**, the condition according to which each group member must be a large taxpayer, being abrogated.

It is also ruled that the appointed representative of the group will assume responsibility for the group's first "consolidated" VAT return, the VAT balances due as at end of the previous fiscal period which are not paid at submission date of the "consolidated" VAT return as well as amounts of recoverable VAT from previous fiscal periods for which group members have not applied for refund.

Practically, further to these amendments, the possibility to form a fiscal group is denied to taxpayers other than large taxpayers, when it was initially possible for all taxpayers starting 1st January 2012.

Harmonisation of Romanian legislation with provisions of Regulation CE 288/2011

Services related to immovable items

Clarification is provided regarding services which are considered related to immovable items as well as regarding those which are not considered related to immovable items.

In the category of rendered services which are considered to be related to immovable items, the followings are included:

- warehousing services for which a certain part of property is allotted for exclusive use of the client;
- granting loans when a certain building, part of the building or a certain plot of land which is to be purchased, constructed, refurbished or repaired is object of a mortgage;
- insurance and reinsurance services which cover the risk of loss and deterioration of property.

Conversely, in the category of rendered services which are considered to not be related to immovable items, the followings are also included:

- preparation of plans/sketches for a building or part of a building for which a certain plot of land is not allotted;
- Intermediary services in respect of accommodation services in a hotel or in places with similar destination in cases where the intermediary acts for and of behalf of other persons;
- legal services not specific to transfer of property ownership.

Access to events

The concept of access to an event has been clarified by stating that it also regards right of access to educational and scientific events as well as seminars and conferences. These provisions apply even when the participation fee for the conference/seminar is granted/allowed only with prior registration of the attendants.

VAT exemption applicable to medical services

Amendments were introduced regarding the sphere of application of VAT exemption applicable to medical services.

The following services are also in the exemption sphere: performance of medical check-ups of individuals for employers or insurance companies, blood sampling or other tests in order to detect the presence of virus, infections or other diseases upon request of employers or insurers, certification of the state of health, e.g. capacity to travel.

On the other hand, services which do not have medical as the primary activity, meaning protection, keeping or recovering to good health but are rather aimed to provide information necessary for decision making with legal consequences are excluded from the exemption sphere. This category includes services such as issue of certificates regarding state of health aimed to be used to grant the right to a pension, preparation of medical expertise reports to set responsibility in case of bodily harm as well as medical examinations performed for this purpose, preparation of medical expertise reports for compliance with norms in respect of work safety in the perspective of solving litigation as well as medical checkups performed for this purpose, preparation of medical reports based on medical lists without performance of medical examinations.

Transactions regarding receivables

Clarification is provided regarding circumstances where VAT exemption applies in respect of transactions regarding receivables. For this purpose, the new provisions present circumstances where operations regarding receivables are taxable, in detail (provision of receivable collection services), exempted from VAT or outside the sphere of application of VAT by referring directly to the decisions of the European Court of Justice in the C-305/01 MKG and C-93/10 GFKL files. Subsequently, to determine which VAT treatment applies, an in-depth analysis on a case-by-case basis is mandatory.

Furthermore, amendments concern the mode of determination of the VAT base for services consisting in collection of receivable, the base being constituted by the value of the rendered service including all the components of the commission received by the Party which takes over the receivable, including its financing component.

Supply of buildings and plots of land

Complements are introduced regarding the case when supply of a plot of land where a building is located occurs after supply of the building or independent to the supply of the building, supply being made by the entity which holds ownership rights to the building or by another entity which only holds ownership rights to the plot of land. The latter case, is a deemed supply of a plot of land where a building may be constructed.



To form a fiscal group, group members must be administered by the same authority



Exemption regarding supply of items

A new point is introduced which refers to **VAT exemption in case of supply of items which**, upon acquisition, have been the object of a special limitation of the deduction right as per article 145¹ of the Fiscal Code. This exemption only applies in cases where **acquisition of the item was the object of full limitation of the deduction right** as per article 145¹ of the Fiscal Code and not in the case where the acquisition was subject to a restriction of deduction right of up to 50%.

Right to VAT deduction

New points have been introduced where it is underlined that the exercise of the right to deduct VAT is mainly based on the intention of the taxable entity to perform operations which allow the right to deduct VAT. For this purpose, several examples are given as well as the following:

- any taxable entity retains the right to deduct VAT exercised upon acquisitions made in relation to fixed assets in progress which are no longer completed/used in circumstances which are beyond the will of the taxable entity. In this respect, a direct link is made to the Decision of the European Court of Justice in the Ghent Coal Terminal C-37/95NV file ;
- the very same provisions also are kept in the case where other acquisitions of goods and services which are not used for the economic activity of the taxable entity for objective reasons which are beyond its control;
- justification of the intention of the taxable entity to realize operations which grant it the right to deduct VAT in case of supply of property or renting/leasing property which no longer meets conditions to be considered new, is documented by submission of the taxation notification set in the appendix to the Implementation Norms of the Fiscal Code.

Capital items

Complements are introduced regarding **circumstances where adjustments to deducted VAT are not made**, i.e. when:

- the amount of each transformation or modernisation does not exceed 20% of the entire value after transformation or modernisation of property or parts of the immovable item;
- writing off tangible assets which are capital items is made in accordance with provisions of a text of law which makes scrapping such assets mandatory.

Registration under the scope of VAT of non taxable entities

Complements are introduced regarding documents necessary for optional registration under the scope of VAT by taxable entities which are not established in Romania and which either realize imports of goods in Romania or carry out operations as well as agricultural land rental, concessions, rent, lease and supply of buildings/building components and plots of land where buildings are constructed, are taxable operations in accordance with the law or for taxpayers which opt for the normal taxation regime.

Invoicing

In respect of invoices transmitted by electronic means, the provision according to which it is necessary to apply for confirmation that conditions and modalities to guarantee authenticity of the source and entirety of the content of the invoice are met apply with the IT General Inspectorate within ANAF, is abrogated.

Simplification measures

A new point is introduced according to which it is ruled that in cases where, at the date non application of reverse tax mechanism is found by tax inspection bodies, the supplier/service provider and/or the beneficiary is insolvent as well as in the case where correction measures cannot be applied concomitantly to the supplier/service provider and to the beneficiary because at least one of the parties is in a position such as inactivity, suspension by Trade Register, radiation from Trade Register, cancellation of VAT registration code, the standard taxation regime remains duly applied if all the following conditions are met:

- as per findings of the tax inspection body, negative fiscal and budgetary consequences for the supplier/service provider and/or beneficiary have not occurred further to the application of the standard taxation regime;
- application of reverse tax mechanism for the supplier/service provider and/or beneficiary may trigger negative fiscal and budgetary consequences.

LOCAL TAXES

For financial lease contracts which are terminated, tax on buildings, land or means of transport, if any, is owed by the lessor starting with the signature date of minutes regarding remittance of the item or other similar documents which certify entry of the item in possession of the lessor further to termination of the lease contract. As for buildings, tax is determined on the basis of the building value according to lessor accounting records.

"Reconstruction, consolidation, modernisation, modification or extension works" realized by the lessor of rented buildings is defined as such works which trigger an increase in value of respective buildings by at least 25%.

The concept of "buildings aimed for tourism" is clarified, and some obligations are assigned to taxpayers which hold such types of building, such as submitting a statement under own responsibility regarding operating or not operating accommodation building during the year and to provide local authorities with supporting documents regarding carried out activities on or before 31 January of the fiscal year.

For the scope of determining of tax on advertising services, it is stated that services regarding decoration, neutralisation and maintenance of advertising are not included in the taxation base.



Further to acquisition of a vehicle when VAT could not deducted, a VAT exempt disposal follows



ORDINANCE 2 dated 25 January 2012 to amend and complement Government Ordinance 92/2003 - Code of Fiscal Procedure (Official Gazette 71/2012)

Government Ordinance 2/2012 to amend and complement the Fiscal Code was published at the very end of January and mentioned in APEX Team newsletter no. 1/2012. The last paragraph of this Ordinance introduced a change in due date for submission of annual profit tax returns, which raised many questions. The main provisions introduced by this Ordinance in the Code of Fiscal Procedure are presented below.

Joint liability

In the conditions of article 27 of the Code of Fiscal Procedure regarding joint liability, the legal representative of the debtor which declares to banks in bad faith that no other cash is available, except for payment of salaries and related withheld contributions and income tax, will be jointly liable.

Fiscal domicile

The obligation to register the fiscal domicile in all cases when it is different from domicile or registered headquarters with tax authorities is introduced. Registration is made by submitting an application for modification of fiscal domicile together with supporting documents. The application is processed within 15 business days starting submission date. Tax authorities will issue the modification of change of fiscal domicile *ex officio* as often as it is found that the fiscal domicile is different from domicile or registered headquarters and that the taxpayer has not submitted an application for modification of fiscal domicile. The date of change of fiscal domicile will be the communication date of the verification decision regarding fiscal domicile.

The provision in which an *ex officio* modification of any fiscal domicile found to no longer correspond to reality is made by a decision issued by tax authorities after a prior hearing with the taxpayer is abrogated.

Advance Price Agreement (APA) and anticipated individual fiscal solution ("SFIA")

The Advanced Price Agreement (APA) has been redefined as the administrative act issued by ANAF to process a taxpayer application to fix conditions and modalities in which transfer prices in case of transactions made between related parties will be determined during an established period. Future transactions which are the object of an APA will be assessed depending on the submission date of the application.

In the scope of processing applications for an anticipated individual fiscal solution ("SFIA") or APA, tax authorities may appear at the taxpayer's headquarters or at an agreed upon location to analyse documentation with the intention of drafting an SFIA or APA project or may ask taxpayers to provide clarification about information on the application and/or submitted documents.

Transaction file

In the scope of determining the purpose or economic content of transactions, a taxpayer must present, in a set timeframe, a transaction file as corroborating evidence upon request of tax authorities in the case where there is no legal means to ensure exchange of information. The content of the file regarding transactions is approved by an ANAF Presidential Order to be issued within 60 days starting the date the Ordinance enters into force.

Communication of fiscal administrative acts

Fiscal administrative acts issued by a mass printing centre are valid, even if they do not bear the signature of persons empowered by tax authorities or the tax authority stamp. The categories of fiscal administrative acts which may be issued by tax authorities under these conditions will be set by MFP Order to be issued within 30 days starting date the Ordinance enters into force.

The communication procedure for the fiscal administrative act has been amended. The fiscal administrative act is communicated by direct remittance to the taxpayer/its representative if receipt under signature is ensured or by post, by registered letter with confirmation of receipt. It can also be communicated by means such as facsimile transmission, email or other electronic means of remote transmission if the transmission of the text of the fiscal administrative act and confirmation of receipt are ensured and if the taxpayer has expressly requested it. Communication in the form of a published public notice is only made in the case where the communication of the act has not been possible by the modalities previously listed.

Tax on non resident income

It is possible for the income payer to submit an application to attribute a tax registration code (CIF) to non resident legal entities which only obtain income under the withholding regime of deemed final tax to tax authorities. Previously, such taxpayers had to appoint a representative who was in charge of complying with the obligations.

Provisions regarding conciliation procedures to avoid/eliminate double taxation are introduced in cases where the convention to avoid double taxation applies as well as to eliminate double taxation between related parties.

Tax evidence

Tax authorities must organize evidence of each taxpayer's fiscal liabilities and track settlement. The procedure regarding taxpayer access to evidence kept by tax authorities is approved by an ANAF Presidential Order to be issued within 30 days starting date of entry of the Ordinance into force.

Refund of amounts collected in excess of fiscal liability amount disclosed on sequester notification

Tax authorities must refund, *ex officio*, amounts collected which exceed the amount of fiscal liabilities disclosed in the sequester notification to freeze taxpayer access to its bank account, as security against a



Communication of fiscal administrative acts is still a concern



tax adjustment, within 5 business days. In case the debtor has fiscal debts in arrears, the refund will only be made after netting.

In case of non compliance with the deadline of 5 business days starting date of collection, the taxpayer has the right to apply for interest starting the day after expiry of the deadline through collection date of the excess amount. Interest is granted upon taxpayer request.

Forced execution

Non compliance with the timeframe of 2 days to cancel forced execution falls under State responsibility for damage produced by civil servants, and the civil servants involved will be investigated as per conditions pertaining to the status of civil servants.

The obligation of tax authorities to cancel sequester notifications with respect to frozen bank account(s) has been ruled with respect to amounts which exceed fiscal liabilities disclosed on the sequester notification in the circumstances where, from information communicated by the taxpayer's bank(s), sequestered funds are sufficient to settle fiscal liabilities disclosed on the sequester notification, taking into account the taxpayer's right to pay salaries from bank accounts frozen by tax authorities. The obligation also applies to the case where sequester measures no longer stand (settlement of fiscal liabilities, cancellation of execution title, etc.).

The limit up to which the bank must enforce a sequester notification is the amount disclosed on the sequester notification. Sequester notifications apply to cash on hand or in banks as well as to future daily deposits to bank accounts in RON and in foreign currency. The banks may process payment orders for salaries as well as related withheld contributions and income tax if, based on a statement under own responsibility of the debtor or legal representative, that the debtor does not hold any other available cash on hand or in banks.

Source: DGFP Vâlcea

ORDER 74 dated 23 January 2012 to rule issues regarding fiscal residence of individuals in Romania (Official Gazette 73/2012)

The Order approves the following forms introduced for the application of provisions of article 40 points 2) to 7) of Law 571/2003 – Fiscal Code with its further amendments and complements and of treaties to avoid double taxation (DTT):

- "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" must be completed by individuals who arrive in Romania or who stay in Romania for one or several periods where the total length of time exceeds 183 days during any period of 12 consecutive months which ends in the calendar year. The non resident individual must submit this form to tax authorities within 30 days after occurrence of the 183 days of stay in Romania.
- "Questionnaire to determine the fiscal residence of individuals upon departure from Romania" must be completed by resident individuals in Romania and by non resident individuals who had to complete the above mentioned questionnaire who leave Romania and who will stay abroad for over 183 days within a calendar year.

These forms are submitted by the concerned individual, personally or by his/her representative to local tax authorities where the individual has his/her domicile as per law.

The main issues which will be taken into account for determination of the fiscal residence of an individual who arrives in Romania are the following:

- the domicile in Romania;
- the permanent address in Romania of the individual, lodgings which may be his/her property or rented, but remains at to his/her disposal or at his/her family's disposal at all times;
- the centre of vital interest is located in Romania;
- the individual is present in Romania for one or several periods which exceed a total of 183 days during any period of 12 consecutive months which ends in the concerned calendar year.

Other issues may also be taken into consideration to determine the fiscal residence in Romania or in another State, but only in addition to the above mentioned elements: vehicle registered in Romania or in another State, driver's license issued by Romanian authorities or by authorities of another State, passport issued by Romanian authorities or by authorities of another State, the person is insured in the Romanian pension regime or in the pension regime of another State for the entire period when he/she stays abroad/in Romania, the person is insured in the Romanian health regime or in the health regime of another State for the entire period when he/she stays abroad/in Romania.

Tax authorities will assess whether residence conditions are met in function of the actual position of the individual, taking into consideration provisions of the treaties to avoid double taxation and provisions of the Fiscal Code, if applicable, as well as the file submitted, and will establish whether the non resident individual keeps fiscal residence in the other State as per the treaty to avoid double taxation or will be a fiscal resident in Romania.

In the scope of deregistering or maintaining evidence with tax authorities, the resident individual in Romania, that is, the non resident individual, must submit the "Questionnaire to determine fiscal residence of individuals upon departure from Romania" 30 days prior to his/her departure from Romania with tax authorities where the "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" was submitted, if the person has not communicated his/her change of domicile/permanent address.

During 2012, individuals who arrived in Romania after 1st January 2009 and continue to be present in Romania after 1st January 2012 must complete the "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania."



Tax authorities attempt to improve tax collection, and why not from individuals assessed as residents?





Questionnaire to assess fiscal residence of individuals arriving in Romania after 01.01 2009 and still in Romania after 01.01.2012

Non resident individuals arriving in Romania before 1st January 2009 and who apply for issuance of the "Certificate of fiscal residence to apply the treaty to avoid double taxation concluded by Romania and for resident individuals in Romania" must complete the "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" and must provide proof of payment of income tax for income obtained, whatever its source, in Romania as well as abroad for the categories of income subject to taxation in Romania.

ORDER 108 dated 2 February 2012 to amend ANAF Presidential Order 2112/2010 to approve application and issuance Procedures for the certificate regarding office space intended to be registered headquarters and for registration of the document which proves the right of use of the office space planned to be registered headquarters as well as to approve model and content of forms, with further amendments and complements (Official Gazette 99/2012)

The Order introduces modifications in the application and issuance Procedures for the certificate regarding office space intended to be registered headquarters and for registration of the document which proves the right to use office space planned to be registered headquarters. Updated procedures are presented below.

Registration of documents which proves the right to use office space planned to be registered headquarters with tax authorities is made upon request at the local ("județ" or Bucharest) Trade Register by transmission in electronic format of the "Application for registration which proves the right to use office space intended to be registered headquarters and for issuance of the certificate for office space intended to be registered headquarters" completed by the applicant accompanied by documents supporting the right of use, such as ownership title, purchase contract, rental agreement, contract for use free of charge ("comodat") or any other document which proves the right of use. The Trade Register will transmit the above mentioned documents to tax authorities, in .pdf format, by electronic post to a dedicated email address.

Tax authorities will reconcile data disclosed on the application to supporting evidentiary documents regarding office space intended to be registered headquarters received from the Registry, also adding the application number allotted by the Trade Register on the application and issue the "Registration certificate of the document which proves the right to use office space intended to be registered headquarters" and the "Certificate for office space intended to be registered headquarters" in .pdf format, again adding the registration number allotted by Trade Register on the application. The documents are transmitted by electronic post to the Trade Register office where the application was submitted.

Processing time frame

For applications accompanied by full documentation received by tax authorities during the first half of business hours, the "Registration certificate of the document which proves the right to use office space intended to be registered headquarters" and the "Certificate for the office space intended to be registered headquarters" are transmitted to Trade Register on the same day. Applications submitted during the second half of business hours are processed the first half of the next day.

The fiscal body in charge is the administration of public finance of the town, "comuna," or Bucharest district under the subordination of ANAF where the office space planned to be registered headquarters is located.

Evidence

The fiscal body will organize evidence of documents which prove the right to use office space planned to be registered headquarters which will include:

- full address of the office space intended to be registered headquarters (street, number, apartment flats, apartment, town, "județ"/district);
- identification data of the holder of the right of use (name, surname/company name, address of the domicile/fiscal domicile and fiscal registration code);
- document which proves the right to use office space aimed to be registered headquarters (type of document, number and date);
- validity period of the right to use office space planned to be registered headquarters (inception date, termination date).

ORDER 225 dated 14 February 2012 regarding consumer price index used for updating advance payments for annual profit tax (Official Gazette 122/2012)

For the 2012 fiscal year, the consumer price index for updating advance payment amounts for the annual profit tax is **3.5%**.

ORDER 110 dated 2 February 2012 to amend appendix 1 to ANAF Presidential Order 1294/2007 regarding taxes, contributions and other amounts deemed fiscal liabilities which are paid by taxpayers to the sole bank account (Official Gazette 94/2012)

ORDER 138 dated 9 February 2012 to amend appendix to ANAF Presidential Order 1314/2007 to approve the modality of distribution of amounts paid by the taxpayer to the sole bank account and to balance fiscal receivables recorded with respect to the taxpayer (Official Gazette 109/2012)



ORDER 163 dated 9 February 2012 to approve models of forms issued to apply provisions of article XI of Government Ordinance 30/2011 to amend and complement Law 571/2003 – Fiscal Code as well as to rule financial and fiscal measures (Official Gazette 120/2012)

The Order approves the model of forms set per Government Ordinance 30/2011 regarding cancellation/reduction of penalties for late payment mentioned in the Fiscal Code, forms already in use since end 2011:

- decision of cancellation of penalties for late payment;
- decision of reduction of penalties for late payment.

INSTRUCTION 5 dated 2 February 2012 regarding the reference interest rate of the National Bank of Romania (NBR) (Official Gazette 88/2012)

Starting 3 February 2012, the NBR reference interest rate is 5.50% per annum.

REGULATION 1 dated 9 January 2012 regarding organisation and operation within NBR of Inspectorate for payment incidents (Official Gazette 49bis/2012)

REGULATION 2 dated 9 January 2012 regarding organisation and operation with NBR of Inspectorate for credit risk (Official Gazette 49bis/2012)

ORDER 116 dated 21 December 2011 to approve Instruction 6/2011 regarding application of IFRS by entities which are licensed, regulated and monitored by National Securities Commission - CNVM (Official Gazette 82/2012)

DECISION 69 dated 1st February 2012 to establish breach of provision of Regulation (CE) 1071/2009 issued by the European Parliament and European Council dated 21 October 2009 to set common norms regarding conditions which must be met for carrying out the function of transport operator and to abrogate Directive 96/26/CE issued by the European Council, Regulation (CE) 1072/2009 issued by the European Parliament and European Council dated 21 October 2009 regarding common norms of access to the market of international road transport of goods, Regulation (CE) 1073/2009 issued by European Parliament and European Council dated 21 October 2009 regarding common norms of access to the market of transport services by coach and bus as well as regarding amendment to Regulation (CE) 561/2006 and Government Ordinance 27/2011 regarding road transport and penalties, and applicable measures for breach of provisions (Official Gazette 114/2012)

INFORMATION – Taxation of gifts

Gifts offered to female employees for the celebration of 8 March ("Women's Day") **are not included as salary income and are not subject to income tax** as long the value of the gift offered to each female employee **does not exceed RON 150**.

Gifts in kind or in cash granted to female employees for the celebration of 8 March with a value exceeding the ceiling of RON 150 are subject to income tax and its value is included in the calculation base for mandatory social contributions.

Gift vouchers may be granted by the employer to its employees only under the caption "social expenses." Gift vouchers granted in accordance with legal provisions are not included in the calculation base for mandatory social contributions as per article 296¹⁵ letter o) of the Fiscal Code.

Upon determination of tax on salary income, the value of granted gift vouchers will be taken into account. **Important! For the employer, in respect of profit tax, gifts in cash and/or in kind represent "social expenses" which are deductible expenses up of 2% of gross payroll expenses when determining profit tax.**

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 February 2012:

1 EUR = 4.3486 RON; 1 USD = 3.2357 RON; 1 CHF = 3.6080 RON; 1 GBP = 5.1548 RON.

MARCH 2012 – 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



**1st March and 8
March, opportunities
for gifts, but what
about their social and
fiscal treatment?**





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 March 2012

To comply with requirements regarding VAT

- Mention the registration code under the scope of VAT on documents for EU business partners
- Check the validity of the registration code under the scope of VAT mentioned on invoices received
- Check the amount of VAT disclosed on invoices received
- Check references related to VAT (e.g.: "reverse charge," "operation not subject to VAT," etc...)
- On invoices, write VAT amount received in case of reverse charge
- Maintain the ledger of goods received
- Maintain the ledger of non-transfer of goods
- Mention which exchange rate will prevail (NBR or commercial bank) in contracts with foreign partners

During the month - do not forget

That Wednesday 7 March is the 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 February 2012. Starting March 2012, VAT returns shall be submitted monthly.

That Monday 12 March is the last day to submit

- Return on collection of hotel tax
- Return for mentions (*amendments*) or deregistration under the scope of VAT in case of entities registered under the scope of VAT as per article 153 of the Fiscal Code which, during the previous year, do not exceed the exemption threshold set at article 152 of the Fiscal Code (form 096).

That Monday 12 March is the last day to pay

- Hotel tax
- Advertising service tax

That Thursday 15 March is the last day to submit

- INTRASTAT statement for February 2012 (standard or extended submitted on-line)
- Annual income return for 2011 for associations which are not legal entities (form 204);
- Statements of acquisitions and supplies in the field of energy in February 2012.

That Thursday 15 March is the last day to pay

- Advance payment of income tax regarding Quarter I 2012 for taxpayers which derive income from independent activities, rental activities except for rental of agricultural land as agricultural activities as per article 71 of the Fiscal Code.

That Monday 26 March 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)*
- VAT return (form 300)*
- Special VAT return for VAT non payers (form 301)*
- Annual profit return tax (form 101)*** except for non-profit organisations and taxpayers which derive most of their income from growing cereal and "technical" plants, or from tree culture and forestry which were required to submit form 101 by 25 February 2012;
- Recapitulative statement of EU Supply/acquisitions/services (form 390)* for February 2012
- Informative Statement on domestic supply/services rendered and acquisitions regarding February 2012 (form 394)*
- Statement of salary income obtained from abroad by individuals who carry out activity in Romania and by Romanian citizens who are employees of diplomatic missions and consular posts accredited in Romania (form 224)
- Environment Fund Statement (excluding "ecotax").

That Monday 26 March is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole bank account – **State Budget**
 - o Tax on crude oil and natural gas from domestic production
 - o Withholding tax on non-resident income

Do not forget to submit annual profit tax for 2011!



- **Tax on profit pertaining to Quarter IV 2011 for taxpayers which must submit annual profit tax return (form 101);**
- Income tax on salary (*separate bank transfer for headquarters and each secondary establishment*)
- Tax on income from independent activities, withheld at source
- Tax on dividends paid in January 2012
- 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
- Contribution for non employment of disabled persons for employers with headcount over 50
- ☑ Liabilities to the sole account – Public Insurance Budget and special funds
 - Social security contribution (*pension*)
 - 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 to Environment Fund ("ecotax" excluded)
- ☑ Annual license fee for gambling operators pertaining subsequent quarter;
- ☑ The contribution of social health insurance (Instalment I) for taxpayers set at article 296²¹ point (1) letter a) - e) of the Fiscal Code, i.e.:
 - Individual entrepreneur;
 - Member of a family enterprise;
 - Licensed individual (PFA) who carries out economic activities;
 - Person who derives income from a profession;
 - Person who derives income from rights of intellectual property and whose income tax is determined from data of simple entry bookkeeping.

That Monday 2 April is last day to pay

- ☑ Local taxes for land, buildings and means of transport (1st instalment). The 2nd and last instalment is to be paid on or before 30 September 2012.

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 (*) may 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.



**Do not forget that
deadlines for
submission match
deadline for payment!**



KEY HR FIGURES

2012 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 2,117 = RON 10,585) 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 700) for every 100 employees	
Minimum monthly gross salary as per Government Decision 1225/2011	RON 700	
Luncheon voucher - employee subject to salary starting March 2011	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 allowances. 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 allowances. 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 2,117 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.

² The author or 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, 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.

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- Assistance in implementation of ERP
- Training