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## **ORDER 144 dated 10 February 2012 to approve adjustment Procedures for errors in tax returns when taxpayers submit adjusted tax returns (Official Gazette 137/2012)**

The Order approves the adjustment procedure for correction of tax return errors by submission of an adjusted tax return.

### **Case where the adjusted tax return triggers a reduction in liability to tax authorities**

In case of submission of an adjusted return by the taxpayer which triggers a reduction in liabilities to tax authorities, interest and penalties for late payment are due only upon the amount which results after correction or modification, starting the day after deadline for payment of liabilities to tax authorities through the date these liabilities are settled.

For additional fiscal liabilities in which computation is updated further to a new analysis of the modalities according to which fiscal liabilities are settled, a "Taxation decision regarding additional fiscal liabilities set further to adjustment of errors included in tax returns in case of submission by the taxpayer of adjusted tax return" is issued and communicated to the taxpayer as per article 44 of the Code of Fiscal Procedure.

If, after adjustment of material errors and correction of tax authority records, funds paid were greater than adjusted fiscal liabilities, such amounts may be netted ex officio, or upon request, with other unsettled fiscal liabilities as follows:

- for fiscal liabilities initiated prior to the date the adjusted return was submitted, the settlement date for netting operations is the submission date of the adjusted tax return;
- for fiscal liabilities initiated after the date the adjusted return is submitted, settlement date for netting is the payment deadline for each fiscal liability.

### **Case where the adjusted tax return triggers an increase in liability to tax authorities**

In case of submission of an adjusted return by the taxpayer which triggers an increase in liabilities to tax authorities, interest and penalties for late payment are due and calculated starting the day after the payment deadline for fiscal liabilities through the date these liabilities are settled.

Additional fiscal liabilities computed further to a new analysis of modalities in which fiscal liabilities are settled are disclosed in detail in the "Taxation decision regarding additional fiscal liabilities set further to adjustment of errors included in tax returns in case of submission by the taxpayer of adjusted tax return" which is communicated to the taxpayer as per article 44 of the Code of Fiscal Procedure.

For fiscal liabilities which are included in the Taxation above mentioned decision, payment deadline depends on the communication date of the Decision, as follows:

- 5<sup>th</sup> of the next month at the latest if the communication date of the decision is between the 1<sup>st</sup> and 15<sup>th</sup> of the month;
- 20<sup>th</sup> of the next month at the latest if the communication date of the decision is between the 16<sup>th</sup> and 31<sup>st</sup> of the month.

## **ORDER 418 dated 19 March 2012 to approve model and content of form (311) "VAT return for taxable entities whose registration code under the scope of VAT is cancelled as per article 153 point (9) letter a) - e) of the Fiscal Code" (Official Gazette 199/2012)**

The Order approves model and content of form 311 "VAT return for taxable entities whose registration code under the scope of VAT is cancelled as per article 153 point (9) letter a) - e) of the Fiscal Code".

Form 311 is used to declare the amount which represents VAT to be paid to the State Budget by taxable entities whose registration code under the scope of VAT was cancelled as per article 153 point (9) letter a) - e) of the Fiscal Code as well as during the period when entities do not have a valid VAT code yet supplied/acquired goods and/or services for which they must pay VAT.

Entities registered under the scope of VAT which fall under the incidence of article 153 point (9) letter a) - e) of the Fiscal Code and subsequently have their registration under the scope of VAT cancelled are:

- taxable entities declared inactive as per provisions of article 78<sup>1</sup> of the Code of Fiscal Procedure;
- taxable entities which entered in temporary inactivity as declared to the Trade Register;
- taxable entities whose shareholders/directors or the taxable entity itself whose fiscal record is not clean considering it contains infractions and/or misdeeds set at article 2 point (2) letter a) of Government Ordinance 75/2001 regarding organisation and operation of fiscal records, republished,

with its further amendments and complements (joint liability with the debtor declared insolvent, established by decision of the competent tax authority which is a final and binding as per prosecution administrative procedures or by judicial decision, if applicable);

- taxable entities which, during half a calendar year have submitted no VAT return but are not declared inactive or are declared as being in temporary inactivity with the Trade Register, as per law;
- taxable entities which, in VAT returns submitted during 6 consecutive months during half a calendar year in case the periodicity for declaration is the month and during 2 consecutive fiscal periods during half a calendar year in case the periodicity for declaration is the quarter, have reported no realized acquisition of goods/services or no supply of goods/provision of services during these declaration periods.

VAT return 311 is submitted on or before the 25<sup>th</sup> of the month after VAT chargeability occurs for supply of goods/provisions of services and/or acquisition of goods and/or services for which the taxable entity must pay VAT.

Form 311 is submitted directly to tax authorities where the taxable entity is registered, or sent by registered mail.

Initial VAT return 311 may be adjusted by submitting an adjusted return. Adjustment is not possible for fiscal periods which have been subject to a tax inspection or for which a tax inspection is in progress.

**ORDER 205 dated 24 February 2012 to approve application and issuance Procedures of the certificate for registration in electronic format of the document which proves the right to use office space planned to be registered headquarters and the certificate regarding office space intended to be registered headquarters (Official Gazette 148/2012)**

**EMERGENCY ORDINANCE 2 dated 28 February 2012 to amend and complement Law 31/1990 regarding commercial companies (Official Gazette 143/2012)**

The Ordinance introduces amendments with respect to mergers to Law 31/1990 regarding commercial companies.

Without discussing merger operations in detail, we only mention what is new: publicity of the merger project. Thus, if the company has its own Internet page, publication in the Official Gazette – Part IV as set per Law 31/1990 may be replaced by a publication made on its own Internet site for a continuous and uninterrupted period of at least one month before the extraordinary shareholders meeting to decide upon merger/demerger is held.

The company which opts for this modality to make the merger project public must ensure technical conditions for continuous, uninterrupted and free of charge access to documents set by law for the entire period set. The company has the duty to prove the continuous feature of the posted announcement, to ensure the security of its own website as well as the authenticity of the posted documents.

In case publicity is made in the above mentioned conditions, the Trade Register where the company is registered will publish the merger or demerger project on its own website free of charge.

**EMERGENCY ORDINANCE 125 dated 27 December 2011 to amend and complement Law 571/2003 – Fiscal Code (Official Gazette 938/2011)**

Starting **1<sup>st</sup> July 2012**, two new chapters are introduced in the New Code and regard:

- Mandatory social contributions for persons deriving income from independent activities, agricultural activities and from associations which are not legal entities;
- Contribution to social health insurance for persons who obtain other income.

Chapter 2 and Chapter 3 contain the following main provisions:

**Chapter 2 – Mandatory social contributions for persons deriving income from independent activities, agricultural activities and from associations which are not legal entities**

The following individuals have the quality of contributor to the public pension and social health insurance regimes with respect to international legal agreements Romania is party to:

- a) entrepreneurs, running an individual enterprise;
- b) members of family enterprises;
- c) persons with the status of licensed individual (PFA) who carry out economic activities;
- d) persons who derive income from a profession;
- e) persons who derive income from the rights of intellectual property for whom income tax is determined on the basis of single entry bookkeeping;
- f) persons who derive income under the withholding income tax regime from activities with the nature set at article 52 point (1) from associations which are not legal entities set per article 13 letter e);
- g) persons who derive income from agricultural activities.

Persons who are insured in the public pension regime as per article 6 point (1) paragraph I – III and V of Law 263/2010, with its further amendments and complements as well as persons who benefit from one of the categories of pensions granted in the public pension regime are not subject to contribution to social insurance (*pension*) for income derived from independent activities, agricultural activities and from associations which are not legal entities.

**The monthly base for social insurance contributions (*pension*)** for persons who derive income from independent activities, agricultural activities as well as from associations which are not legal entities is the declared amount which cannot be less than 35% of the average gross salary (i.e. RON 2,117 x 35% = RON 741) and cannot be more than 5 times the average gross salary (i.e. RON 2,117 x 5 = RON 10,585). Taxpayers whose remaining realized income after deduction of incurred expenses from total



**VAT return (form 311)  
for taxable persons  
whose VAT  
registration code has  
been cancelled**



income, and whose annual income quota assessed on 12 months of the year is less than the above mentioned minimum base (i.e. RON 2,117 RON x 35% = RON 741 x 12 = RON 8,891) are not subject to social insurance contributions (*pension*).

**The monthly base for social health insurance contributions** due to the Sole National Fund for Social Health Insurance (FNUASS) is the difference between total collected income and incurred expenses excluding social contributions or the annual income quota assessed on a 12 month year and cannot be less than the national minimum monthly gross salary (i.e. RON 700) if this income is the only income upon which the contribution is due.

The base for calculation of the social insurance (*pension*) contribution for persons mentioned per letter f) above is gross income set by contract concluded between the Parties, the difference between gross income and deductible expenses set at article 50 (20% of gross income for income from intellectual property rights, 25% of gross income from income derived from monumental works of art) or income derived from the association, as the case may be. The calculation base for social health insurance contributions for persons mentioned at letter f) also cannot be less than the national minimum monthly gross salary (i.e. RON 700) if this income is the only income upon which the contribution is due.

#### **Advance payment of social contributions**

Taxpayers who derive

- income from intellectual property rights,
- income from sale of items under consignment regime,
- income from activities carried out on the basis of agent contract, commission contract or commercial mandate,
- income from activities carried out on the basis of civil contracts/agreements concluded as per Civil Code,

income from activities of accounting and technical expertise, judicial and extrajudicial expertise must disburse advance payments in respect of social contributions during the year.

Regarding social health insurance contributions, advance payment amounts are set by the tax authority in charge by means of a taxation decision drafted on the basis of a statement of estimated income/statement of realized income, or income quota.

In respect of social insurance contributions (*pension*), advance payment amounts are set on the basis of declared income.

In the taxation decision, the base for calculation of the social insurance contribution (*pension*) is disclosed as a monthly value, but payment of this contribution is to be made quarterly in 4 equal instalments by the 25<sup>th</sup> of the last month of each quarter at the latest.

Payment of the social health insurance contribution is to be made quarterly in 4 equal instalments on or before the 25<sup>th</sup> of the last month of each quarter, and, for taxpayers deriving income from agricultural activities, in 2 equal instalments through 25 September and 25 November.

Taxpayers who derive income under withholding regime for income tax from intellectual property rights, from sale of items under consignment regime, from activities carried out in the case of agent contract, commission contract or commercial mandate, from activities carried out on the basis of civil contracts concluded as per the Civil Code, from accounting and technical expertise, as well as judicial and extrajudicial expertise are subject to social contributions during the year, in the form of advance payments, **the income payers being obliged to calculate, withhold and transfer the respective amounts.**

Withheld contributions are transferred on or before the 25<sup>th</sup> of the month after the month when income was paid; or the 25<sup>th</sup> of the month after the applicable quarter end depending on the fiscal period the income payer has chosen.

For taxpayers who opted for application of income tax rate as final income tax, payment of social contributions in the form of advance payments made during the fiscal year are also final.

#### **Declaration, final calculation and payment of social contributions**

Declaration of income which represents the monthly base of social insurance contributions (*pension*) is made by submission of a return regarding the amount insured in the public pension regime and with respect to social health insurance contributions, by submission of the statement of estimated income and the statement of realized income.

In case of taxation on a real basis (*vs. income quota*), the amount of annual mandatory contributions to social health insurance is determined on the basis of a statement of realized income by application of the contribution rate to the mentioned calculation base. Upon determination of the annual base of social health insurance, losses set at article 80 (fiscal losses carried forward) are not taken into account. The annual mandatory contribution to social health insurance is set by annual taxation decision, which is subsequently adjusted after considering advance payments made by the taxpayer.

Balancing the social health insurance contribution as per annual taxation decision is to be settled 60 days after date of communication of the decision at the latest, and the amounts paid in excess are used for netting or are refunded as per provisions of the Code of Fiscal Procedure.

**Contribution rates** are:

- full contribution rate for social insurance (*pension*) corresponding to normal work conditions as per law (i.e. 20.8% + 10.5% = 31.3%);
- individual insured person's contribution rate for social health insurance contribution (i.e. 5.5%).

Taxpayers under withholding regime for income tax deemed final income tax are only subject to individual insured person's contribution for social insurance (i.e. 10.5%) and to individual insured person's contribution for social health insurance (i.e. 5.5%).




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**Mandatory pension  
and health  
contribution starting  
1st July 2012 for  
certain categories of  
insured persons and  
advance payments**

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### Chapter 3 – Contribution to social health insurance for persons who obtain other income

Persons who do not obtain income with the nature mentioned in Chapter 1 (income from independent activities, salary income, pensions, income from agricultural activities) or Chapter 2 as well as income from unemployment allowances during a fiscal year must also pay social health insurance contributions for:

- rental income;
- investment income;
- gambling and prize income;
- disposal of personal real estate property;
- fiduciary operations;
- other sources.

For such income, the base for social health insurance contributions cannot be less than the national minimum monthly gross salary (i.e. RON 700).

**The social health insurance contribution** is set by the tax authority in charge, through an annual taxation decision, based on information from:

- statement of realized income for rental income, disposal of securities other than shares and securities of closed companies, the net annual gain on forward foreign currency contracts and any similar operation;
- tax evidence for rental income in case net income is determined after deduction of 25% of gross income to cover expenses;
- quarterly tax return for income regarding income derived from securities transactions other than shares and securities of closed companies;
- statement regarding calculation and withheld tax for each income beneficiary.

#### Social health insurance contribution base

For rental income, the contribution base is set at articles 62, 62<sup>1</sup> and 62<sup>2</sup> of the Fiscal Code.

For investment income, the contribution base is set at article 66 of the Fiscal Code.

For gambling and prize income, the contribution base is set at article 76 of the Fiscal Code.

For fiduciary operations, the contribution base is set at article 42<sup>1</sup> of the Fiscal Code.

For income from other sources, the contribution base is realized gross income.

Upon determination of the annual income/gain which is the base for social health insurance contributions, losses set per article 80 (fiscal losses carried forward) and 80<sup>1</sup> (net annual loss upon disposal of securities) are not taken into account.

#### Contribution calculation

The contribution to social health insurance for the subsequent year is calculated by application of the individual insured person's contribution rate (i.e. 5.5%) upon income which is the base obtained by accumulating the above mentioned bases.

#### Contribution payment

The annual social health insurance contribution is set by annual taxation decision and must be settled 60 days after communication date of the decision at the latest.

### ORDER 283 dated 2 March 2012 to amend ANAF Presidential Order 3294/2011 regarding competence in performing control of personal fiscal position (Official Gazette 158/2012)

In the sense of provisions of Chapter III - "Special provisions regarding control of individuals subject to income tax" and Title VII - "Tax inspection" of the Code of Fiscal Procedure, the body in charge of performing inspections of personal fiscal position for the entire territory within the ANAF central structure is the Inspectorate for tax inspection. In case of individuals whose fiscal domicile is located in Bucharest, the fiscal authority in charge is from the Bucharest district where the individual's fiscal domicile is located. For performing preliminary documentary assessment, tax inspection and for double checking individuals subject to income tax, the General Inspectorate of Public Finance of the "judet" where the individual's fiscal domicile is located is in charge.

### REGULATION 1 dated 9 January 2012 regarding organisation and operation of the credit risk Centre within the National Bank of Romania (Official Gazette 49bis/2012)

We revert to Regulation 1/2012 of the National Bank of Romania (BNR) and present some of the changes that were introduced by the Regulation which entered in force 6 February 2012, when BNR Regulation 1/2001 regarding organisation and operation within BNR of the Central payment default database was abrogated, as published in Official Gazette 120/2001.

The Regulation defines a payment default incident as a bank account holder not meeting its obligations in full and at the time set during the settlement process for payment instruments, obligations which results from law, such default being reported to the Central payment default database by the declaring persons.

At risk persons are individuals or legal entities, resident or non resident, who are registered in the National File of persons exposed to risk further to registration of their names due to one or several major defaults.

The party which must pay is the individual or legal entity, resident or non resident who, by issue/acceptance of a payment instrument, is obliged to meet the assumed obligation.

The party obliged to pay a cheque is the drawer, for a bill of trade it is the party accepting the instrument, and for a promissory note, the issuer.



**Health contribution base cannot be less than RON 700**



A major default is default generated by one of the following circumstances:

**In case of a cheque:**

- the cheque is refused upon payment because it was issued without drawer approval;
- the cheque is refused upon payment due to lack of available cash to pay in full, in case of presentation for payment before expiry of the presentation period;
- the cheque is refused upon payment due to insufficient available cash to pay its full amount, in case of presentation for payment before expiry of the presentation period;
- the cheque is refused upon payment because it was issued with a false date;
- the cheque is refused upon payment because it has been issued by a person forbidden to draw cheques.

**In case of promissory notes and bills of trade:**

- the promissory note/bill of trade to be paid upon receipt is refused for payment due to lack of cash available for its full amount, in case of presentation for payment upon receipt;
- the promissory note/bill of trade to be paid upon receipt is refused for payment due to insufficient cash available to pay its full amount, in case of presentation for payment upon receipt;
- the promissory note/bill of trade to be paid after a set time lapse after issue date or at a set date is refused for payment due to lack of cash available to cover the full amount due, in case of presentation for payment at the set due date;
- the promissory note/bill of trade to be paid after a set time lapse after issue date or at a set date is refused for payment due to insufficient cash available to pay its full amount, in case of presentation for payment at the set due date.

To be forbidden to draw cheques is the status applied by a credit institution further to a major default produced by a cheque where the applicable bank account holder is prohibited from issuing cheques for a period of one year.

Declaring persons when referring to the Central payment default database (CIP) are:

- credit institutions – Romanian legal entities will have access to all information, regarding defaults produced by their own bank account holders or bank account holders in their local branches;
- branches of foreign credit institutions in Romania will have access to all information regarding defaults produced by their own bank account holders.

The structure of the CIP database is formed of:

- National Default File which contains defaults with respect to cheques, bills of trade, and promissory notes which are structured in:
  - o National File regarding cheques;
  - o National File regarding bills of trade;
  - o National File regarding promissory notes.
- National File of persons exposed to risk.

Access to the CIP IT system by CIP accredited persons is conditioned to names allotted by the BNR. Access to the CIP database by declaring persons may be daily.

Regulation 1 sets the regime regarding information with respect to defaults as well as registration of information regarding defaults.

In case of registration of a cheque default in the database which triggers a banking prohibition, the credit institution must notify the bank account holder that he/she is prohibited from drawing cheques in the scope of preventing occurrence of new defaults and to punish the bank account holder who generated a default in the banking system.

Suspension of banking prohibition is registered in the CIP database by declaring persons on the basis of a binding judicial decision whereby the banking prohibition is cancelled. Suspension of a banking prohibition is registered within one day of presentation of the judicial decision which decides the suspension, by the bank account holder. The declaring person is not liable for non execution of the judicial decision if it was not communicated by the bank account holder.

After transmission of a default incident, the credit institution must make available the content of default information with respect to each bank account holder name or entity name as registered in the CIP, within one day of transmission.

Information regarding default is kept in the CIP database for 7 years starting registration date.

In case a declaring person becomes aware of errors with respect to transmitted information which was registered in the CIP database, adjustments may be made using the "Form for adjustment of information registered in the CIP database."

Declaring persons are liable for truthfulness and comprehensiveness of information regarding defaults transmitted to the CIP.

**ORDER 794 dated 6 February 2012 regarding reporting procedure for data regarding packaging and packaging waste (Official Gazette 130/2012)**

The Order regards producers and importers of merchandising packaging, producers/importers of packed products as well as the entities that pack packed products which individually meet objectives regarding management of packaging and packaging waste and which must report data regarding nature, quantity, recycling feature and other data regarding packaging and packaging waste to the "județ"/regional agency for environment protection.

The Order makes reporting mandatory and makes this obligation binding to importers of merchandising packaging, producers/importers of packed products as well entities that pack packed products which has



**Payment default and registration National Bank's Central payment default database**





partially transferred their duties with respect to management of packaging and packaging waste. Such entities will report data regarding non transferred quantities of packaging.

Data to be declared are transmitted to the "județ"/regional agency for environment protection where the registered headquarters of the economic operator is located.

Licensed packaging and packaging waste management operators will declare data to the National Agency for Environment Protection (ANPM) on total quantities of packaging for which contracts with economic operators subject to environment taxes have been concluded as well as data regarding quantities of packaging for which they endorsed liability for each economic operator.

Local public authorities must communicate data to the "județ"/regional agency for environment protection regarding packaging waste collected by public local waste management operators on the basis of data provided by local operators.

ANPM has made the format of the report available on its website.

Reports will be prepared taking into consideration the following general indications:

- Packaging quantities of as well as packaging waste are to be declared in kilograms;
- Packaging made of composite materials are reported as per the main material;
- EU acquisitions of packaging and packaging products are assimilated with imports;
- The caption "wood" will include wood as well as cork.

The Administration of the Environment Fund will make available the list of economic operators registered as contributors to the Fund to ANPM in electronic format, before 31 January of each year,

Reports are consolidated in a national database maintained by ANPM.

The Order entered in force at its date of publication, 23 February 2012.

### INFORMATION – Treaty to avoid double taxation between Romania and the Netherlands

The Ministry of Public Finance has published an Instruction to clarify some issues regarding interest income and royalties for the purpose of application of the Treaty to avoid double taxation concluded between Romania and the Netherlands.

It is thus specified that for income with the nature of interest and royalties obtained in Romania by residents in the Netherlands, tax is due at the rate set per paragraph 2 of articles 11, "Interest," and 12, "Royalties" of the Treaty corroborated with provisions of sections IX and X of the Protocol which is an integral part of the mentioned treaty:

- "IX. At article 11 – Irrespective of provisions of paragraph 2 of article 11, if and as long as that in the Netherlands, as per internal legislation, no tax is withheld on interest paid to a resident of the other contracting State, the tax rate set at paragraph 2 of article 11 will be reduced to zero.
- X. At article 12 - Irrespective of the provisions of paragraph 2 of article 12, if and as long as that in the Netherlands, as per internal legislation, no tax is withheld on royalties paid to a resident of the other contracting State, the tax rate set at paragraph 2 of article 12 will be reduced to zero."

The Instruction states that the Netherlands has not amended its internal legislation in the field of taxation of income with the nature of interest and royalties, in the sense that this State does not collect a withheld tax on interest and royalties paid to a resident in Romania. Subsequently, to apply provisions of the treaty, the effective beneficiary of revenue with the nature of interest and royalties in Romania must present his/her tax residence certificate issued by tax authorities in the Netherlands, in original (or legalized copy) accompanied by an authorized translation in Romanian to the income payer.

Text of the Instruction is available on [http://discutii.mfinante.ro/static/10/Mfp/Circulara\\_Olanda.pdf](http://discutii.mfinante.ro/static/10/Mfp/Circulara_Olanda.pdf)

### IMPORTANT – Exemption of withholding tax (WHT) on non resident income which represent dividends

We remind that as per article 117 of the Fiscal Code dividends paid by an enterprise which is a Romanian legal entity or a legal entity with its registered headquarters in Romania set as per European legislation to a legal entity resident in another EU member State or in one EFTA State, i.e. Iceland, Liechtenstein, Norway, are exempted from withholding tax if the foreign legal entity/beneficiary of the dividends meets certain conditions and if it has been holding at least 10% of the share capital of the Romanian legal entity for an uninterrupted period of at least 2 years as of the date dividends are paid

As per provisions of article 118 of the Fiscal Code, "Corroborating provisions of the Fiscal Code to those of treaties to avoid double taxation and with European Union legislation," the non resident must, at the time of collection, provide the income payer with its tax residence certificate issued by the competent authorities of its State of residence as well as, if applicable, **a statement under own responsibility declaring that the condition of beneficiary in the context of applying EU legislation is met.** If the tax residence certificate and declaration stating the quality of beneficiary are not provided as of the payment date, provisions of Title V of the Fiscal Code apply, and subsequently, the income is taxed as per internal legislation.

The quality of beneficiary in the perspective applying EU legislation will be proved by the tax residence certificate and, if applicable, by a statement under own responsibility regarding meeting all conditions with respect to minimum duration of holding, minimum percentage of interest in share capital of the Romanian legal entity, the legal structure set at Title II or V of the Fiscal Code, the quality of being liable for profit tax or a similar tax without possibility of option or exemption.

To approve the necessary form for the statement under own responsibility, Order 724 dated 4 February 2011 (Official Gazette 131/2011), presented in 2011 APEX Team newsletters, was issued:

- Declaration for exemption from taxation in Romania for payments of dividends made by a Romanian legal entity or by a legal entity with its registered headquarters in Romania set as per EU legislation

Packaging and  
packaging waste  
reports for  
environment  
protection agency



to a legal entity resident in another EU State or a EFTA State or to a permanent establishment of an enterprise of another EU State or EFTA State located in another EU or EFTA State. The form may be downloaded from [http://static.anaf.ro/static/10/Anaf/formulare/a16\\_724.pdf](http://static.anaf.ro/static/10/Anaf/formulare/a16_724.pdf)

The above mentioned declaration must be prepared in 2 originals and will be accompanied by the tax residence certificate issued by the State of residence of the effective beneficiary of dividends.

One original will be kept by the effective beneficiary and the second copy will be provided to the income payer as evidence to apply the exemption.

The declaration is valid for the year for which the tax residence certificate is issued, except for cases where circumstances for granting exemption suffer changes.

Even if the purpose of the declaration is to document conditions met regarding residence and ownership, as per Order 724/2011, this form was introduced, as well as information regarding date when payments are made and amounts paid in RON and/or Euro. We assess that this information need not be communicated to tax authorities, and information regarding the legal structure of the beneficiary, its tax residence and its ownership percentage are sufficient. The payment date and the amount paid are information available after obtaining the form, and it is obvious that the form must be provided before payment is made. Subsequently, the following questions are still pending because clarification was not provided in the amendments of the Fiscal Code introduced at the beginning of 2012 or in the Implementation norms of the Fiscal Code:

- Are the date of payment and the paid amount to be handwritten by each of the Parties in the form each Party already holds?
- Are forms to be provided for each payment, even if it regards the same type of income? Alternatively, must the information be handwritten on to the same form?

**INFORMATION - Allocating 2% of income tax to a non profit organisation**

As per provisions of article 57 of the Fiscal Code, a taxpayer can decide upon the destination of an amount representing up to 2% of the annual income tax on his/her salaries to support non profit organisations which are legally constituted and operated, to religious organisations as well as to make private grants as per law by filing and submitting form 230, "Application regarding destination of amount representing 2% donation of the annual income tax and application to apply for deduction of expenses for the purpose of realising collective savings in the rental field."

Furthermore, as per article 84 of the Fiscal Code, the taxpayer may decide upon the destination of an amount representing up to 2% of the tax due for net annual income from independent activities, rental income, agricultural income, net annual taxable gain upon disposal of securities other than shares and securities of closed companies, the net annual gain on foreign currency forward contracts and any similar operation to support non profit organisations which are legally constituted and operated, to religious organisations as well as to make private grants as per law by filing and submitting form 200 "Statement of income obtained in Romania."

Forms 200 and 230 can be obtained at tax authority offices or downloaded from the ANAF website. As per Instructions to complete the forms approved by OMFP 52/2012, forms can be submitted directly at tax authority premises or sent through the post by registered mail. Form 200 can also be submitted online, on [www.e-guvernare.ro](http://www.e-guvernare.ro), if the taxpayer has a digital certificate.

The deadline for submission of forms 200 and 230 is 25 May 2012.

Source: DGFP Vâlcea

**REMINDER – Deductibility of interest**

- Upon determination of profit tax, the ceiling for deduction of interest on loans in foreign currency is 6% per annum.
- Interest is a fully allowed expense when the gearing ratio is less than or equal to 3. The gearing ratio represents the ratio between capital borrowed during the tax year and own share capital. Average borrowed capital and own capital should be used for the calculation, based on amounts as at the beginning and end of the period for which corporate tax computations are made. Borrowed capital is total loans and borrowing during a one year period as per contractual provisions.
- If the gearing ratio is greater than 3, interest expense as well as the net foreign exchange loss is not tax deductible. They are carried forward to future periods until they are fully deducted.
- If foreign exchange losses of the taxpayer exceed foreign exchange gains, the net loss will be treated as interest, meaning its deductibility will have the same limits as interest. Exchange rate differences related to loans taken into consideration when computing the gearing ratio are also subject to these limitations.

These deductibility limitations do not apply to loans granted by credit institutions.

**INFORMATION – Procedure to correct invoices**

The document which stands for an invoice is the document issued for a supply of goods or provision of services in accordance with the obligations made mandatory by an agreement or treaty where Romania is one of the Parties and which contains information set at article 155 point (5) of the Fiscal Code, at a minimum.

**Modalities to correct documents**

Correction of information disclosed in invoices or on other documents which stand for an invoice is made as follows:

- in case the document has not been transmitted to the beneficiary, it is cancelled and a new docu-

**Allocate 2% of your annual income tax to a non profit organisation!**



- ment is issued;
- in case the document was transmitted to the beneficiary, either a new document is issued which must include on one hand information from the initial document, the number and the date of the corrected document, the amounts preceded by a minus sign and on the other hand, the correct information and amounts, or a new document is issued containing correct information/amounts and at the same time a document is issued with the amounts preceded with the minus sign in which the number and the date of the corrected document are mentioned.

In case VAT base is adjusted as per provisions set at article 138 of the Fiscal Code, suppliers of goods and/or service must issue invoices or other documents with the disclosed amounts preceded by the minus sign when the VAT base is reduced or, if applicable without the minus sign if the VAT base increases and must transmit these documents to the beneficiary, except for circumstance where the amount of supplied goods or rendered services cannot be collected due to beneficiary bankruptcy.

If a taxable person has issued invoices with application of VAT and afterwards enter in possession of supporting documents which allow application of a VAT exemption set at articles 143, 144 or 144<sup>1</sup> of the Fiscal Code, the taxable person can correct the issued invoices in accordance with provisions of article 159 point (1) letter b) of the Fiscal Code by applying the exemption regime corresponding to the realized operations.

**Correction of documents further to a tax inspection**

Taxable persons which were subject to a tax inspection during which errors were found regarding determination of output VAT, being liable to pay it on the basis of an administrative act issued by the tax authority in charge, may issue correcting invoices to the beneficiaries. Beneficiaries have the right to deduct VAT disclosed on such invoices in the limits and conditions set per article 145 – 147<sup>1</sup> of the Fiscal Code. Tax inspection bodies will not allow VAT deduction in the case where checked documents afferent to acquisitions do not contain all information set at article 155 point (5) of the Fiscal Code and/or these information is incorrect, if during the period when tax inspection is in progress at the beneficiary, respective documents are corrected by the supplier of goods/service provider.

Important! The supplier/provider has the right to correct certain information on the invoice which is mandatory as per article 155 point (5) of the Fiscal Code, which were omitted or incorrectly disclosed but are not of a nature to amend the VAT base and/or VAT afferent to the operations or to amend the fiscal regime of the initially charged operations even if they were submitted to a tax inspection. This invoice will be attached to the initial invoice, and must be recorded on the VAT return for the tax period during which correction is made, for the supplier/provider as well as for the beneficiary.

Suppliers/providers which issue correction invoices after tax inspection, in accordance with provisions of article 159 point (3) of the Fiscal Code, will disclose these invoices with a separate caption in the sales journal which will be also reported in a separate caption on the VAT return without having the obligation to collect the VAT disclosed on the respective invoices.

To avoid fraud and to allow identification of cases where invoices are issued after tax inspection, in the content of these invoices, suppliers/providers will mention that these invoices were issued after tax inspection. The beneficiaries will have the right to deduct VAT disclosed on these invoices in the limits and conditions set at articles 145 – 147<sup>1</sup> of the Fiscal Code, VAT being disclosed under the captions of the VAT return afferent to acquisitions of goods and services. Issuance of correction invoices cannot exceed the time lapse set at article 147<sup>1</sup> point (2) of the Fiscal Code, i.e. 5 years.

The above mentioned provisions also apply in the case of small businesses which did not register under the scope of VAT in accordance with article 153 of the Fiscal Code at the time the exemption threshold was exceeded and for which tax inspection bodies have determined amounts of output VAT to be paid.

Important! Modalities for correction of documents stipulated at article 159 of the Fiscal Code only apply to persons registered under the scope of VAT in Romania. For entities which are not registered under the scope of VAT in Romania and are not required to do so, provisions of article 155 point (11) of the Fiscal Code apply.

**Correction of self-invoices**

In case of self-invoice issued in accordance with article 155 points (2) and (4) and to article 155<sup>1</sup> point (2) of the Fiscal Code, if the taxable entity which issued them becomes aware that incorrect information is disclosed, either a new self-invoice will be issued which must include on one hand information from the initial self-invoice, the number and the date of the corrected self-invoice, the amounts preceded by a minus sign and, on the other hand, correct information and amounts. Alternatively, a new self-invoice may be issued, containing correct information/amounts and at the same time a self-invoice with the amounts preceded by a minus sign in which the number and the date of the corrected self-invoice are mentioned. In the case where the self-invoice was incorrectly issued or as per law, it is set that in certain circumstances it is possible to cancel own supply/provision: the taxable person issues a self-invoice with the amounts preceded by a minus sign, and where the number and the date of the cancelled self invoice are mentioned.

Source: DGFP Vâlcea

**EASTER CELEBRATION**

Gratuities can take several forms:

- Allowances of RON 150 for each under age child of employees. This amount granted by the employer to its employees is granted under the caption, "social expenses," which are tax deductible up to 2% of annual payroll together with other categories of welfare expenses under the Fiscal Code.



**Respect procedures to correct invoices**





This amount is not subject to income tax for the employee when it is not granted in the form of gift voucher when gift vouchers are subject to income tax. We mention that granting an amount which exceeds the ceiling of RON 150 or in other circumstances what is allowed by law is considered a benefit in kind which is subject to income tax and is included in the calculation base for mandatory social contributions.

- ☑ Bonuses in addition to April gross salaries are subject to withholding of employee contributions and income tax. For the employer, bonuses and related employer contributions are tax allowed expenses;
- ☑ "Easter presents," other than those mentioned above are considered benefits in kind, the employee being subject to all individual contributions as well as income tax. For the employer, these presents are subject to employer contributions but are tax allowed expenses.

### IMPORTANT

Once annual financial statements for 2011 are finalized, all supporting accounting and fiscal documentation regarding 2011 is to be finalized:

- ☑ the Tax Evidence Register (to disclose computation of the tax profit/loss based on accounting profit/loss) has been completed;
- ☑ check that the minutes of the Inventory Committee are duly signed as well as resolutions for writing off and discarding assets, as the case may be;
- ☑ archiving supporting documents.

### Conservation of documents and accounting registers

- ☑ Order 3512 dated 27 November 2008 regarding accounting documents and registers (Official Gazette 870/2008) discloses the **list of financial and accounting documents** which may be **kept for 5 years** starting the closing date of the financial year during which they were drafted, unless internal company requirements indicate they should be kept longer. Among the most important documents, we mention: Entry Note and minutes of differences ("NIR"), Consumption notes ("BC"), Instructions for delivery, Stock cards, Inventory Lists, Receipts, Disposition for payment/collection forms for petty cash, Travelling docket (delegation), Bank statements, Journal of sundry operations (for "synthetic" accounts), Account ledger for sundry operations, Cumulative document;
- ☑ **Payroll statements** are to be kept for **50 years**. **Supporting documents** and registers are to be kept for **10 years** starting the closing date of the financial year during which they were drafted, except as stated below;
- ☑ Invoices regarding capital assets, meaning real estate property which were taken into account in determining VAT deductions for taxable persons under a mixed regime and for the persons partially taxable in accordance with Fiscal Code provisions will be kept for the duration set in article 149 paragraph 6 of Law 571/2003 – Fiscal Code, with its further amendments and complements;
- ☑ Financial accounting documents which attest the provenance of items with a lifespan of over 10 years will usually be kept for a longer period, i.e. the useful life of the item.
- ☑ **Mandatory accounting registers**, i.e. the Journal Register (code 14-1-1), Inventory Register (code 14-1-2) and General Ledger (code 14-1-3) **are kept within the enterprise for 10 years**, starting the closing date of the financial year for which they were maintained.

### INFORMATION – National Bank of Romania has reduced its reference interest rate to 5.25% per annum

National Bank of Romania has announced a reduction of its reference interest rate from 5.50% to **5.25%** per annum starting 30 March 2012. The levels of mandatory minimum reserves in RON and in foreign currency of banks remain unchanged.

### 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 March 2012:

1 EUR = 4.3791 RON; 1 USD = 3.2805 RON; 1 CHF = 3.6346 RON; 1 GBP = 5.2532 RON.

### APRIL 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

#### 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




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**Be aware of  
retention periods for  
documents and  
registries**

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authorities as per article 8 point 7<sup>1</sup> of the Fiscal Code. 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

- 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 April 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 Thursday 6 April 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 March 2012. Starting April 2012, VAT returns shall be submitted monthly.

##### That Tuesday 10 April 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 Tuesday 10 April is the last day to pay

- Hotel tax
- Advertising service tax

##### That Monday 16 April is a day off (Easter Monday)

##### That Tuesday 17 April is the last day to submit

- INTRASTAT statement for March 2012 (standard or extended submitted on-line)
- Statements of acquisitions and supplies in the field of energy in March 2012

##### That Wednesday 25 April 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)\*
- Recapitulative statement of EU Supply/acquisitions/services (form 390)\* for March 2012
- Informative Statement on domestic supply/services rendered and acquisitions regarding March 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)
- Statement of allocation between associates of income and expenses pertaining to Quarter I 2012 (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)
- Statement to determine the tax representing a quarterly advance payment on tax on net annual taxable gains on gains realized during Quarter I 2012 upon disposal of securities other than shares and securities of closed companies (form 225)
- Environment Fund Statement (including "ecotax").

##### That Wednesday 25 April is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole bank account – **State Budget**
  - o **Tax on profit pertaining to Quarter I 2012**
  - o **Tax on the revenues of the micro enterprise pertaining to Quarter I 2012**
  - 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*)



**Do not forget  
submission and  
payment deadlines!**



- o Tax on income from independent activities, withheld at source
- o Tax on dividends paid in March 2012
- 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).

**That Monday 30 APRIL is the day to submit**

- Annual financial statements for non profit organisations

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

Tax returns noted with an asterisk (\*) 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.



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**30 April is deadline  
for submission of  
financial statements  
for non profit  
organisations**

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## 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) <sup>1</sup>	10.5% (contribution base per employee capped at 5 average monthly gross salaries according to Budget for public social insurance, i.e. 5 x 2,117 = RON 10,585) <sup>1</sup> (contribution base for a person under civil contract: gross income)
Health insurance fund (based on gross salary)	5.2%	5.5%
Medical leave contribution and health insurance allowance (based on gross salary)	0.85%	
Unemployment fund (based on gross salary)	0.5%	0.5%
Work accident and occupational disease fund (based on gross salary) <sup>2</sup>	0.15% - 0.85% depending on CAEN code for main activity	
Contribution to fund to guarantee payment of salary liabilities (based on gross salary)	0.25% (only for employees under labour contract included for retired persons)	
Salary tax		16%
Contribution for non employment of disabled persons (for employers with more than 50 employees)	4 x 50% minimum gross salary (RON 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% <sup>1</sup>
Contribution to health insurance	0%	0% <sup>2</sup>
Contribution to unemployment insurance ( <i>if applicable</i> )	0%	0.5% <sup>3</sup>
Income tax		16% <sup>4</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

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

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

- Bookkeeping
- Recurring accounting assistance
- Payroll computation and additional HR services
- Accounting and tax advice « on line »
- Consulting and assistance in drafting transfer price files
- Start up services
- Organization of the accounting function
- Assistance in implementation of ERP
- Training