

Romania, Bucharest
Blvd Dacia 56, District 2
Phone: +40 (0)31 809 2739
Phone: +40 (0)74 520 2739
Fax: +40 (0)31 805 7739
E-mail: office@apex-team.ro

EMERGENCY ORDINANCE 24 dated 6 June 2012 to amend and complement Law 571/2003 – Fiscal Code and to establish financial and fiscal measures (Official Gazette 384/2012)

The Ordinance introduces important amendments to the Fiscal Code.

Limitation to deductibility of expenses pertaining to vehicles as well as related VAT

The Ordinance has introduced amendments to the limitation rules regarding deductibility of expenses pertaining to road motor vehicles up to 3.5 tons with up to 9 seats.

The new rules apply starting 1st July 2012.

If until 30 June 2012, limitations applied to acquisition of petrol/fuel and acquisitions of automobiles, limitations are extended to all expenses pertaining to road motor vehicles whose characteristics are mentioned above, starting 1st July 2012.

The Ordinance also introduces the principle of exclusive use for performance of economic activities which is in force to determine whether or not these expenses are limited. Thus, expenses are fully deductible if the vehicle belongs to any of the following categories:

- vehicles used exclusively for emergency services, guard and protection services and mail services;
- vehicles used by sales and procurement agents;
- vehicles used for the transport of persons for a fee, including taxis;
- vehicles used for providing services for a fee, including rental to other persons or driver's education vehicles;
- vehicles used for commercial purposes.

Vehicles which are not disclosed in the above mentioned categories of use are submitted to the following test: if it is demonstrated that the vehicle is **exclusively** intended for economic activity, then expenses are fully deductible; otherwise, the deduction is capped at 50% of the expense.

The only type of expense which is not subject to the above mentioned limitation is fiscal depreciation expense.

We point out that in the category of vehicles not subject to expense limitation are vehicles for intervention and repair, for the press corps and vehicles used by employment agents.

It is stated that irrespective of the usage category of a vehicle, expenses are deductible for only one vehicle per person.

The Ordinance mentions that Implementation Norms will be published.

From the present wording, it is possible to assess that **all expenses pertaining to automobiles are subject to limitation**, among which we can quote: rental of automobiles (including those under **operational or financial lease** contracts), maintenance and repair expenses, spare parts, servicing, mandatory insurance (*Civil liability*) or CASCO (*fully insured*), road tax, tax on the means of transport and any other expense related to these automobiles. In respect of the modality to support the fact that vehicle expenses are incurred to perform economic activities, we assess that the sole supporting document is the automobile log book which must disclose at least the following information: category of used vehicle, reason and where to, mileage done, standard petrol consumption of the vehicle. Provisions of the Norms to be published should provide clarification.

We mention that the above mentioned provisions apply to VAT related to road motor vehicles and in respect of expense deductibility limitations to determine the tax on income derived from independent activities. The same criteria also apply to such cases.

Tax allowed impairments

Starting 1st July 2012, impaired receivables placed with assignees for collection by credit institutions are tax allowed up to the limit of the difference between the value of the receivable placed with the assignee and the amount due by the assignor (credit institution) for a receivable which meets all of the following conditions:

- are transferred and recorded in assignee books after 1st July 2012;
- are transferred by an entity or due from an entity which is not an assignee related party;
- were included in taxable revenue of the taxpayer assignee.

Increase of VAT ceiling at RON 220,000

Starting 1st July 2012, the ceiling for VAT exemption for taxable operations in Romania increases from Euro 35,000 to Euro 65,000, at the exchange rate communicated by National Bank of Romania when

Contents:

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Romania joined European Union and rounded to the nearest thousand, i.e. RON 220,000. For newly set-up taxable entities that start their economic activity during a calendar year, **the ceiling for VAT exemption is no longer determined in proportion to the time period between set-up date and year end.**

The VAT exemption ceiling in case of application for withdrawal from the list of persons registered under the scope of VAT by the taxable entity registered under the scope of VAT is the exemption ceiling for the year in progress, i.e. RON 220,000. The ceiling is no longer calculated in proportion to the time period from the beginning of the year through the effective date.

Withdrawal from the list of persons registered under the scope of VAT and cancellation of VAT registration

In case of taxable entities having the month as its tax period and which have not submitted VAT returns for 6 consecutive months but is not in the position to be declared inactive or has not entered into temporary inactivity declared with the Trade Register, tax authorities will cancel registration under the scope of VAT of the taxable entity starting the first day of the month after the month in which the sixth VAT return was due.

Starting with VAT returns pertaining to Quarter III 2012, in case of taxable entities having the quarter as its tax period and has not submitted VAT returns for 2 consecutive calendar quarters but is not in the position to be declared inactive or has not entered into temporary inactivity, tax authorities will automatically cancel VAT registration of the taxable entity starting the first day of the month after the month the second VAT return was due.

Starting with VAT returns pertaining to July 2012, cancellation of VAT registration for taxable entities having the month as its tax period is carried out by tax authorities if, in the VAT returns submitted during 6 consecutive months, no acquisition of goods/services or no supply of goods/provision of services realized during these reporting periods is disclosed. In these cases, cancellation will start the first day of the month after the month when the sixth VAT return was due.

Starting with VAT returns pertaining to Quarter III 2012, where the taxable entity has a quarterly tax period, tax authorities will cancel the entity's registration under the scope of VAT if, in the VAT returns submitted for 2 consecutive quarters, no acquisition of goods/services or supply of goods/provision of service realized during these reporting periods is disclosed, cancellation starting the first day of the month after the month the second VAT return was due.

Taxation of transactions made by individuals on the capital market

Starting 1st January 2013, upon determination of investment income, the net annual gain/net annual loss upon disposal of securities other than shares and securities in closed companies is determined as the difference between gains and losses incurred during the respective year. The net annual gain/net annual loss is determined by the taxpayer via his/her statement of realized income which is submitted by the taxpayer on or before 25 May of the year after the gain/the loss was incurred.

The annual tax due on the net annual gain by the taxpayer is established by the tax body in charge, based on the statement of income submitted by the taxpayer.

As for gains/losses upon disposal of securities other than shares and securities of closed companies, starting 1st January 2013, **advance payments** in respect of the annual tax **are no longer made during the year**. Quarterly taxation of gains on capital market transactions will therefore end.

To summarize, such gains will be **taxed annually** as follows:

- during the year, the individual makes transactions without disbursed or withheld tax;
- the intermediary through which transactions were made must calculate the gain or loss for each transaction;
- each intermediary must transmit information regarding total gains/losses on the transactions made during the year to each person who had transactions, by the end of February of the subsequent year;
- the taxpayer submits his/her annual statement of realized income by 25 May of the subsequent year, tax due on these transactions will then be calculated by tax authorities.

Fiscal regime for dividends received from European Union Member States

Dividends received by a Romanian legal entity which is the parent company of a subsidiary located in an EU Member State are not taxable if the legal entity holds at least 10% of the share capital of the legal entity located in the other Member State which pays dividends.

Similarly, dividends received by permanent establishments in Romania of foreign legal entities of other Member States, parent companies are not taxable if the foreign legal entity holds at least 10% of the share capital of the legal entity located in another Member State which pays dividends.

ORDER 879 dated 25 June 2012 to approve reporting procedures regarding Accounting Report of economic operators as at 30 June 2012 (Official Gazette 427/2012)

The Order approves reporting procedures regarding Accounting Report as at 30 June 2012 of entities which apply Accounting Regulations in conformity with EU Directive IV enacted by Ministry of Public Finance (MFP) Order 3055/2009 and where net turnover for the prior financial year was greater than the RON equivalent of Euro 35,000. RON equivalent of Euro 35,000 is determined by using the exchange rate in force as at 31 December 2011 (i.e. 1 Euro = 4.3197 RON) as communicated by National Bank of Romania (NBR), therefore a 2011 net turnover greater than RON 151,189.

For the purpose of collecting information for national statistics, provisions of the present Order also apply to sub units such as branches registered in Romania which belong to legal entities whose registered headquarters are abroad, whatever the chosen financial year.



Capital market gains by individuals are taxed on an annual basis starting 2013



Economic operators should not prepare an Accounting Report as at 30 June 2012 if:

- they have not carried out any activity from set-up date through 30 June 2012;
- they were set up during the first half of 2012;
- they were in temporary inactivity through the first half of 2012;
- they were under liquidation as per law.

Entities which opted for a financial year different from calendar year as per Accountancy Law 82/1991 assess if criterion set above is met using the indicators disclosed in the last annual financial statements, meaning the trial balance closed at the end of the prior financial year and the exchange rate in force at that year-end date as communicated by NBR.

Entities which opted for a financial year different from calendar year complete the forms with information pertaining to the period from 1st January 2012 to 30 June 2012.

Entities listed below must submit their Accounting Report as at 30 June 2012 with local units of the Ministry of Public Finance in the format established by, and the deadline set by the responsible regulatory institution:

- credit institutions and non banking financial institutions as defined by regulations in force and registered in the General Registry,
- payment institutions and institutions issuing electronic currency as defined by law which grant loans related to payment services where activity is limited to provision of payment services;
- fund for guarantee of deposits in the banking sector;
- entities licensed, regulated and monitored by the Insurance Monitoring Commission (CSA);
- entities licensed, regulated and monitored by the Private Pension Fund Monitoring Commission (CSSPP);
- entities licensed, regulated and monitored by the National Securities Commission (CNVM).

Non profit entities (associations, foundations) do not prepare an Accounting Report as at 30 June 2012.

The Accounting Report includes:

- Statement of assets, liabilities and equity (code 10);
- Income statement (code 20);
- Informative data (code 30).

Forms included in the Accounting Report as at 30 June 2012 are completed in RON.

Format

The electronic format of the Accounting Report as at 30 June 2012 as well as forms and guidance on their preparation and control can be downloaded from the MFP website: www.mfinante.ro

Signature of the Accounting Report

Accounting Report as at 30 June 2012 is signed by persons entitled to do so, their full name being disclosed. The caption regarding the quality of the person who had prepared the Accounting Report is completed as follows:

- CFO, head of accountancy department or other empowered person occupying this position as per law;
- Individual or legal entity, duly licensed, member of the Romanian Body of Chartered and Licensed Accountants (CECCAR).

"Other empowered person occupying this position" means any employee as per law who meets the conditions set by Law 82/1991, republished, with its further amendments and complements.

Accounting Report as at 30 June 2012 is also signed by the Director or by the person with whom management of the entity lies.

Submission of the Accounting Report

The Accounting Report can be submitted at the registration desk of the local units of MFP in paper format and in electronic format or if a digital certificate is held on www.e-guvernare.ro only in electronic format which consists in a pdf file to which an xml file is attached

The Accounting Report can also be sent by registered postal mail.

In case of submission at the registration desk of the local units of MFP or by postal mail, the Accounting Report in electronic format is to be attached to the Accounting Report which has been printed, duly signed and stamped.

Deadline for submission of the Accounting Report

The Accounting Report as at 30 June 2012 must be submitted on or before Thursday **16 August 2012**.

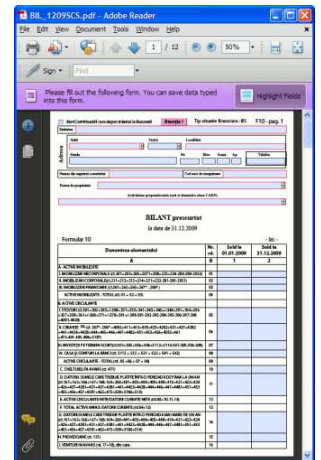
ORDER 881 dated 25 June 2012 regarding IFRS application by listed companies (Official Gazette 424/2012)

Starting 2012, listed companies must apply IFRS for the preparation of their stand alone annual financial statements.

For financial year 2012, stand alone annual financial statements in accordance with IFRS are prepared by retreatment of accounting books kept in accordance with Accounting Regulations in conformity with EU Directive IV, approved by OMFP 3055/2009.

Stand alone annual financial statements prepared in accordance with IFRS will be audited as per law. These financial statements are prepared in RON and in Romanian.

Entities which enter under the incidence of these provisions must ensure continuity in IFRS application, if they are no longer listed at balance sheet date.



Accounting Report as at 30 June 2012 must be submitted on or before 16 August 2012



DECISION 52 dated 31 May 2012 regarding processing data with personal features using video monitoring (Official Gazette 389/2012)

We present the main provisions of this decision below.

Images of identified or identifiable persons processed by video monitoring means may constitute data with personal features.

- even if not associated with identification data of the person,
- even if the image of the filmed person is not enclosed but other information allowing his/her identification is available (for instance, the vehicle registration number).

The length of storage of data obtained via a video monitoring system must be proportional to the scope for which data are processing but cannot exceed 30 days, except for circumstances expressly ruled by law or for well grounded reasons. At expiry of the time period set by the operator, recordings are destroyed or erased in function of the support used for their storage.

Processing of personal data by video monitoring system, including transfer of such data to another State, must be communicated to the National Authority for Processing Data with Personal Features (ANSPDCP) prior to inception of processing except for cases which enter under the responsibility of the ANSPDCP President in respect of circumstances where notification is not necessary.

Installation and operation of equipment and components of video monitoring system are performed for their technical aspects in conformity with legal provisions in force.

Video monitoring can be primarily carried out for the following reasons:

- prevent and combat infractions;
- monitor vehicular traffic and become aware of non compliance of regulations regarding vehicular traffic;
- ensure safeguard and protection of persons, items and valuables, buildings and installations of public interest and surroundings;
- ensure measures of public interest or exercise prerogatives of public authority;
- undertake measures for legitimate reason, under the condition that they do not induce a prejudice to fundamental rights and freedoms or in the interest of the persons under surveillance.

Video monitoring can be made in closed locations and spaces or intended for the public, including entrance points to public or private domains in the conditions set by law. Cameras of video monitoring must be installed in visible spots. It is forbidden to use hidden video monitoring means, except for cases set by law. Processing data with personal features by video monitoring means is forbidden in places where intimacy must remain private.

Processing data with personal features of employees by means of video monitoring is permitted to meet an express legal obligation or for a legitimate reason, but with respect for employee rights, especially the right to prior notification.

In case the above mentioned provisions are not applied, processing of data of an employee with personal features by video monitoring means can only be made under the employee's express and freely given consent while respecting employee rights, especially the right to prior notification.

It is not permitted to process data with personal features of employees by video monitoring inside premises where employees carry out their occupation, except in cases expressly stated by law or agreed upon by ANSPDCP.

Processing data with personal features of employees by video monitoring means can be only performed by persons authorized by the operator. These persons must have received training in respect of legislation regarding protection of data with personal features by the operator and must comply with it.

The ANSPDCP decision entered into force 11 June 2012.

Operators of data with personal features which process data described above have 60 days starting the date the decision entered into force (i.e. by 10 August 2012) to take steps to ensure compliance with its provisions.

ORDER 874 dated 20 June 2012 to approve model and content as well as modalities of submission and administration of "Statement regarding insured income in the public pension scheme" (Official Gazette 421/2012)

The Order approves model and content of the form "Statement regarding insured income in the public pension scheme" (D600).

We remind that starting 1st July 2012, ANAF is in charge of administrating mandatory social contributions to which individuals who derive income from independent activities and other income are liable to as per the provisions of Emergency Government Ordinance 125/2011 to amend and complement the Fiscal Code.

Considering issues which need further clarification, additional information regarding modifications entering in force as at 1st July 2012 will be posted in Facebook (www.facebook.com/apex.team) and we will revert on this topic in the next APEX Team newsletter.

REMINDER – Recruitment of students during legal holidays

As per Decision 726/2007 (Official Gazette 477/2007), employers recruiting students during legal holidays will benefit from monthly financial support for each student hired but not for more than 60 working days in a calendar year. This assistance represents 50% of the amount of the social reference indicator. This concept of social reference indicator was introduced by Government Emergency Ordinance 108 (Official Gazette 830/2010) amending Law 76/2002 regarding unemployment insurance and provision of employment opportunities. The social reference indicator is presently RON 500. To benefit from this as-



**Video monitoring –
no hidden camera
and advance
notification to
employees**



sistance, employers must sign a convention with the Unemployment Agency within 30 days of the date of employing a student during the holidays.

Employers deduct the financial benefit from its unemployment payment contributions.

REMINDER – Carrying out temporary activities as a day labourer

Day labourer work represents another modality in which students may work during their holidays.

Activities with an occasional feature may be carried out in the following domains: agriculture, hunting and fishing, forestry except timber activities, fish farming and aquaculture, tree and vineyard cultivation, bee keeping, breeding of stocks, performing arts, cinematographic and audiovisual productions, cultural activities, handling goods, maintenance and cleaning activities.

Law 52/2011 (Official Gazette 276/2011) rules the legal framework in which day labourers may carry out temporary activities which represent departure from provisions of the Labour Code.

We present the main provisions of this Law below:

- ☑ The relation between the day labourer and the beneficiary is established without conclusion of a labour contract.
- ☑ The beneficiary must maintain the Day Labourers Registry (purchased from the local Labour Inspectorate – ITM) which is kept at the beneficiary headquarters. This registry must be updated daily, prior inception of activity.
- ☑ No one may hire someone as a day labourer who has not reached the age of 16.
- ☑ The length of the occasional activity which may be carried out is at least of one day, which corresponds to 8 hours of work.
- ☑ The maximum length for carrying out activities by a day labourer cannot exceed 12 hours, or 6 hours for an underage person who can work. Even if the Parties agreed to fewer hours of, daily pay for day labourer will be set at the equivalent of at least 8 hours of activity.
- ☑ Day labourers are at the end of each day of work.
- ☑ The amount of hourly gross pay set by the Parties cannot be less than RON 2 per hour nor more than RON 10 per hour and is paid at the end of each day of work prior to signature of the Day Labourers Registry, by both the day labourer and the beneficiary. Proof of payment of daily pay is the day labourer's signature in the Day Labourers Registry.
- ☑ Payment of income tax due for activity carried out by the day labourer is supported by the beneficiary. The income tax of 16% is applied to gross pay. Withheld tax is declared by the beneficiary on form 112.
- ☑ Mandatory social contributions are not due by the day labourer or by the beneficiary for income derived from activities carried out by day labourers.
- ☑ The activity carried out in conditions of the present Law does not confer the quality of insured person within the public pension regime, public unemployment insurance regime or public health insurance regime to the day labourer. The day labourer may obtain health and/or pension insurance separately if he/she wishes.
- ☑ Monthly, by the 5th of the month at the latest, the registry must be presented to the Labour Inspectorate where the registered headquarters of the company beneficiary is located.
- ☑ No day labourer may carry out activities for the same beneficiary for more than 90 cumulative days during a calendar year.



Provide a job to a student on vacation: subsidized labour contract or day labourer

REMINDER – Luncheon and Holiday vouchers

Luncheon vouchers are not granted when the employee is not at work (during paid or unpaid holidays, absences, technical unemployment, sick leave, legal days off, etc.). In addition, when the employee is on a business trip and receives a daily allowance (to cover his/her food expenses), he/she is not entitled to receive a luncheon voucher.

The maximum amount of holiday vouchers which may be granted within a year represents 6 minimum monthly gross salaries (*i.e. 6*RON 700 currently*). Holiday vouchers are tax deductible when computing corporate tax or tax on income.

Persons who receive nominative holiday vouchers are the sole beneficiaries for the timeframe mentioned on the holiday voucher and only pay for the contractual tourist package in Romania.

As per Emergency Ordinance 8 dated 18 February 2009 on granting holiday vouchers (Official Gazette 110/2009), the employer may grant holiday vouchers in 2012 **only if the enterprise posted a fiscal profit in 2011**.

We remind that both luncheon and holiday vouchers are subject to employee income tax as per provisions of Emergency Government Ordinance 58 dated 26 June 2010.

REMINDER – Statistical report to National Bank of Romania (BNR) regarding non monetary transactions

As per article 2 of BNR regulation 26 dated 12 December 2006, residents which carry out transactions with non residents directly and via financial institutions must report the transactions to the BNR – Directorate of Statistics.

Non monetary transactions are made without money transfer, totally or partially, as is the case for barter, netting or clearing transactions.

The form to prepare the report may be downloaded from BNR website

<http://www.bnro.ro/DocumentInformation.aspx?idDocument=12632&directLink=1> (appendix V.6, pages 54-57).



The form is completed and submitted to the BNR by residents which perform non monetary transactions on a regular basis within a group, with tracking of regular netting between participants and clearing of transactions being assured, as well as residents which perform occasionally netting with non residents.

BE AWARE! Computation of compensation for days off

In accordance with article 150 points 1 and 2 of the Labour Code:

"Compensation for paid holidays cannot be less than base salary, compensation and bonuses with a permanent feature to which the employee is entitled for the respective period.

Compensation for paid holidays represents the daily average of employee's rights for the 3 months prior to the month when vacation is taken, multiplied by the number of days off."

An example of computation for days off taken in August 2012:



Month	Base salary with permanent compensation and bonuses	Working days
May 2012	RON 2,100	22
June 2012	RON 2,100	20
July 2012	RON 2,100	22
Total 3 last months	RON 6,300	64
August 2012	RON 2,100	22

Daily average (6,300/64): **RON 98.44**

Daily average for the month of AUGUST (2,100/22): **RON 95.45**

To compute compensation for days off, the 2 averages are compared and the result more favourable to the employee is chosen.

Thus, assuming the employee was on vacation for 10 days in August 2012, compensation paid will be:

10 days off * RON 98.44 = RON 984

The outcome is RON 29 higher than the base salary and permanent compensation/bonus the employee would have received if he/she had worked the entire month.

Keep in mind that an employee is not entitled to receive luncheon vouchers for the number of days he/she was on vacation.

INFORMATION – Reverse tax – simplification measures in the field of VAT

Field of application

Operations for which reverse tax mechanism apply are the following:

- supply of ferrous and non ferrous waste, production rejects of ferrous and non ferrous material, including supply of semi-finished products resulting from processing, manufacturing or melting;
- supply of residue and other recyclable materials accompanying ferrous and non ferrous metal, alloys included, slag, ash and industrial residue which contain metal or alloys;
- supply of waste of recyclable materials and used recyclable materials consisting of paper, cardboard, textile material, cable, rubber, broken glass or glass;
- supply of materials enumerated in the first 3 captions above after processing/transformation by cleaning, polishing, selection, cutting, fragmentation, pressing or transformation into ingots, including non ferrous ingots which are obtained upon addition of other alloy elements;
- supply of wood and wood materials as defined per Law 46/2008 – Forest Code with its further amendments and complements;
- supply of cereal and "technical plants" mentioned in article 160 of Law 571/2003 with its subsequent amendments and complements which are on the list set by EU Regulation 2658/87 issued by the Council on 23 July 1987 regarding the tariff and statistical list as well as common customs tariffs (this simplification measure applies through 31 May 2013);
- transfer of greenhouse gas emission certificates as defined in article 3 of EU Directive 2003/87/CE issued by the European Parliament and Council on 13 October 2003 to establish a trading system of percentages of gas emission within the European Union and to amend EU Directive 96/61/CE issued by the Council, transferable certificates in accordance with article 12 of the Directive as well as the transfer of items which may be used by operators in accordance with the same Directive.

How to implement simplification measures

Provisions regarding simplification measures only apply to above mentioned supply of goods/provision of services which take place on the Romanian territory as per articles 132 and 133 of the Fiscal Code and which are taxable operations in accordance with Title VI of the Fiscal Code.

Output VAT is not mentioned on the invoice issued by the supplier/service provider for supply of goods/provision of services for which simplification measures apply.

Be aware! The mandatory condition to apply reverse tax is that both the supplier/service provider and the beneficiary are registered under the scope of VAT as per article 153 of the Fiscal Code.

VAT is calculated by the beneficiary and declared on its VAT return as both output VAT and input VAT. The beneficiary has the right to deduct this VAT in the limits and conditions set at articles 145 - 147¹ of the Fiscal Code.

In case of supply of goods upon which simplification measures set at article 160 point (2) of the Fiscal Code apply, collected down payments included, the supplier/provider issues the invoice without VAT and writes a notation on this invoice regarding the fact that reverse tax has been applied. VAT is calculated by the beneficiary which writes the amount of VAT on the invoice, records it in the purchase journal as well as declares it on its VAT return as both output VAT and input VAT. From an accounting point of view, the beneficiary will record the book entry for the VAT amount - Debit 4426/Credit 4427 - during the applicable tax period.

Beware of computation of compensation for days off and no luncheon voucher



Declaration of VAT by the purchaser on its VAT return as both output and input VAT is known as automatic VAT liquidation. To declare output VAT in the amount of input VAT is assimilated to a payment of VAT to the supplier/service provider.

Be aware! Taxable entities under a dual regime (*pro rata* VAT) which are the beneficiary of purchases subject to reverse tax as per article 160 of the Fiscal Code will deduct VAT up to the limits and in conditions set per articles 145, 145¹, 146, 147 and 147¹ of the Fiscal Code on their VAT returns.

Suppliers/service providers which are taxable entities under a dual regime (*pro rata* VAT) will take the amounts of supplies/provisions of services for which reverse tax applies into account in the computation of *pro rata* VAT as taxable operations.

Measures taken in case of non compliance with application of reverse tax mechanism set at article 160 of the Fiscal Code

In case of non-compliance with application of reverse tax set by law, tax inspection bodies will impose measures to require the supplier/service provider and the beneficiary to correct the transactions and to apply reverse tax. During the tax inspection of the operations at the beneficiary premises, tax inspection bodies will keep in mind that the beneficiary had the obligation to collect VAT at the time of VAT chargeability of the operation and concomitantly to exercise the right of deduction in the limits set by law.

Except for the above mentioned provisions, if, in cases where, at the date non application of reverse tax mechanism is found to no longer apply according to tax inspection bodies, the supplier/service provider and/or the beneficiary is insolvent as per Law 85/2006 regarding insolvency procedures with its further amendments and complements or is insolvent in the conditions set per the Code of Fiscal Procedure as well as in the case where simplification 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 as per article 78¹ of OUG 92/2003 – Code of Fiscal Procedure republished with its further amendments and complements, 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.

Source: DGFP Vâlcea

INFORMATION – Modalities of communication of an administrative fiscal act

Definition, content

An administrative fiscal act is the act issued by a competent fiscal body in the field of application of legislation in respect of determination, amendment or extinction of duties and fiscal obligations and is only issued in writing.

The administrative fiscal act includes the following components:

- denomination of the fiscal body which issues it;
- date when it is issued and date when it produces its effects;
- identification data of the taxpayer or of the person the taxpayer has empowered;
- object of the administrative fiscal act;
- rationale;
- legal background;
- name and signature of duly authorized persons of the fiscal body as per law;
- stamp of the fiscal body which issues it;
- possibility to be challenged, deadline for submission of challenge and fiscal body with which challenge is to be submitted;
- notations regarding taxpayer hearings.

Communication of the administrative fiscal act

The administrative fiscal act is communicated directly to the taxpayer or to the person the taxpayer empowered if receipt of the administrative fiscal act under signature is ensured or by registered mail with confirmation of receipt.

The administrative fiscal act can also be communicated by other means such as fax, email or other electronic means of remote transmission if transmission of the text of the administrative fiscal act is ensured as well as confirmation of its receipt and if the taxpayer has expressly requested such means of communication.

In the circumstances where communication of the administrative fiscal act has not been possible by the above mentioned means, public communication is carried out.

Public communication is simultaneous publication of an announcement which discloses that an administrative fiscal act for the taxpayer has been issued, at premises of the fiscal body which issued the administrative fiscal act and also on the ANAF website. For administrative acts issued by fiscal bodies of local public administrative authorities, simultaneous publication occurs at their premises and on the website page of the respective local public administrative authority. If the local public administrative authority does not have a website, an announcement is placed on the website of the "Judet" Council. In all cases, the administrative fiscal act is deemed communicated after expiry of 15 days after date of public communication.

In the case of a taxpayer with no fiscal domicile in Romania which has granted a power of attorney to a person or when a trustee has been appointed, the fiscal administrative act is communicated to the em-



Mandatory reverse charge if VAT simplification measures apply



powered person or to the trustee.

Additional clarification

The administrative fiscal act produces its effects when it has been communicated to the taxpayer or at a later date disclosed in the communicated administrative act, as per law. The administrative fiscal act which has not been communicated in accordance with the above mentioned modalities is not opposable to the taxpayer and produces no legal effect.

The absence of one of the components of the administrative legal act regarding name, surname and quality of the authorized person of the fiscal body, name, surname or denomination of the taxpayer, object of the administrative act or signature of the person authorized by the fiscal body, except when the administrative fiscal act was issued at a mass printing centre, **makes it null and void**.

It may be assessed null and void upon request or ex officio.

Source: DGFP Vâlcea

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 June 2012:

1 EUR = 4.4494 RON; 1 USD = 3.5360 RON; 1 CHF = 3.7024 RON; 1 GBP = 5.5101 RON.

JULY 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 authorities as per article 8 point 7¹ 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 July 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 Friday 6 July 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 June 2012. Starting July 2012, VAT returns shall be submitted monthly.

That Tuesday 10 July 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 July is the last day to pay

- Hotel tax
- Advertising service tax

That Monday 16 July is the last day to submit

- INTRASTAT statement for June 2012 (standard or extended submitted on-line)



**Fiscal
administrative act:
content and
communication**



- Statements of acquisitions and supplies in the field of energy in June 2012.

That Friday 20 July is the last day to submit

- Special VAT return for Quarter II 2012 for non established taxable entities who rendered electronic services to non-taxable entities.

That Wednesday 25 July 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)*
- Statement regarding amounts deriving from VAT adjustments (form 307)
- VAT return regarding VAT due by taxable entities which registration code under the scope of VAT was cancelled as per article 153 point (9) letters a)-e) of the Fiscal Code (form 311)
- Recapitulative statement of EU Supply/acquisitions/services (form 390)* for June 2012
- Informative Statement on domestic supply/services rendered and acquisitions regarding June 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 (including "ecotax")
- Statement for Quarter II 2012 for the determination of tax which represents an anticipated payment on tax on net taxable gain obtained from disposal of securities other than shares and securities of closed companies (form 225)
- Informative statement regarding income derived from disposal of personal real estate property (form 208) during first half of 2012
- Statement regarding allocation of Quarter II 2012 income and expenses between associates (form 104 to be submitted by associations which are not legal entities ruled by article 13 letters c) and e) of the Fiscal Code).

That Wednesday 25 July is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole bank account – **State Budget**
 - o **Tax on profit for Quarter II 2012**
 - o **Tax on revenues of the micro enterprise for Quarter II 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*)
 - o Tax on income from independent activities, withheld at source
 - o Tax on dividends paid in June 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)
- 50% of the tax upon rental of rooms to tourists made by owners of rooms located in their private lodgings with an accommodation capacity of between 1 and 5 rooms (first instalment).

And in perspective.....

- "Accounting report" submission as at 30 June 2012 (balance sheet, income statement, and informative data) due on or before Thursday 16 August 2012, only by companies/branches required to do so!

IMPORTANT

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
submission and
payment deadlines!**



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 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.

Romania, Bucharest
Blvd Dacia 56, District 2

Phone: + 40 (0) 31 809 2739
Phone: + 40 (0) 74 520 2739
Fax: + 40 (0) 31 805 7739
E-mail: office@apex-team.ro

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- Training