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## Dear clients, business partners and readers of APEX Team newsletters

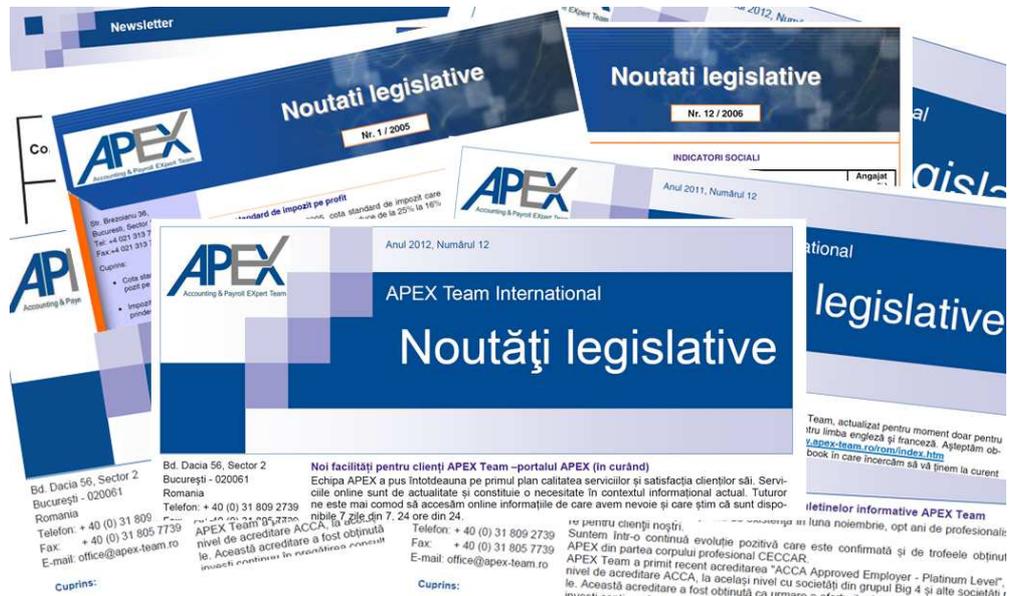
With this issue we celebrate THE 100th edition of APEX Team Newsletter. It is time to celebrate more than 8 years during which we published this material on a monthly basis in Romanian, English and French.

APEX Team did important efforts to maintain the quality and timeliness of published materials. We value the feedback received from our readers and we are proud that our publication became one of the most popular monthly newsletter published on the market.

We want to thank you all for the interest showed for APEX Team Newsletters and for the recognition of our efforts and we promise APEX Team shall remain a trusted partner.

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## LAW 72 dated 28 March 2013 on combating late payments under contracts between economic operators or between economic operators and contracting authorities (OG 182/2013)

The Law incorporates European Directive 7/2011 on combating late payment in commercial transactions into Romanian legislation and will have a significant impact especially in commercial transactions with public authorities. The new law came into force on 5 April 2013.

The contracts covered by this law are all contracts concluded between economic operators OR between economic operators and contracting authorities for the supply of goods or provision of services, including the design and execution of public works, buildings and civil engineering work.

**Contracting authority** is defined as any public authority of the Romanian State or any public body financed by the State, at central or local levels. Economic operators means any natural or legal person who operates as a profit-making enterprise (i.e. all companies, authorized self-employed (PFA), family associations, etc.).

The law defines the term, "abusive clause", as a practice or a contractual clause through which it is established in clearly inequitable way, in relation to the lender, payment terms, late payment penalty interest rate or additional damages. The law does not define and does not clearly outline limits of the notion, "clearly inequitable", so it is open to interpretation by the Courts whether a clause or practice is "clearly inequitable".

### Specific provisions for contracts between economic operators:

- The payment term is maximum 60 days.** It may set longer payment terms with the condition that would not to be considered an abusive clause
- The applicable penalty interest rate shall be that laid down in the contract.** If the parties have not set the interest rate, it will be calculated at the legal penalty interest rate, **based on the NBR reference interest rate (currently 5.25%) + 4 percentage points**
- The penalty interest rate shall apply from the deadline laid down in the contract.** If such a term is not stipulated in the contract, interest shall be applied:

- o after 30 calendar days from receipt date by the debtor of an invoice or other equivalent payment notification
- o after 30 calendar days from receipt of goods or services if the receipt date of the invoice or equivalent payment request is uncertain or is previous to receipt of goods or provision of services
- o if the law or contract establishes a procedure for reception or quality check, allowing certification of conformity of goods or services, and the debtor has received the invoice or the equivalent payment request at the date of reception or verification or before that date, after 30 calendar days from that date.



**Clauses considered abusive in contracts between economic operators:**

- excludes possibility to apply penalty interest rate or establishment of penalty interest rates lower than legal penalty interest rate
- conditional application of interest by a notification procedure of late payment
- provision for a longer payment term than the 30 calendar day period mentioned above from which the liability produces interest
- elimination of possibility of additional payment of damages
- setting up a specific term for the issuance/receipt of invoice.

**Specific provisions for contracts between economic operators and contracting authorities**

- The payment term from the contract is at most:**
  - o 30 calendar days from receipt date of an invoice or other equivalent payment notification by the debtor
  - o 30 calendar days from receipt of goods or services if the receipt date of the invoice or an equivalent payment request is uncertain or is previous to receipt of goods or provision of services
  - o 30 calendar days from the reception or quality check, if the law or the contract establishes a procedure for reception or quality check, and the contracting authority has received the invoice or the equivalent payment request at the date of receipt or before that date.
- By exception, the payment term can be extended to a maximum of 60 calendar days** if it is specifically mentioned in the contract and in procurement documentation and is objectively justified and the clause does not constitute abuse. The law qualifies the establishment of a longer payment term in contracts between economic operators and contracting authorities, as abusive ex officio, without being necessary to check circumstances of the cause. Qualifying this clause as abusive ex officio contradicts the possibility conferred in the second thesis of art. 7 para. 1 to set payment terms longer than 60 days, so this discrepancy between the two articles of law could generate practical issues
- Applicable penalty interest rate shall be that laid down in the contract.** If the parties have not set in the contract the interest rate, it will be calculated at the legal penalty interest rate, based on NBR reference interest rate (currently 5.25%) + 8 percentage points
- Penalty interest rate shall apply starting the deadline laid down in the contract.** If such a term is not stipulated in the contract, the penalty interest rate applies from the date mentioned above.

**Clauses considered abusive in contracts between economic operators and contracting authorities:**

- exclusion the possibility to apply penalty interest rate or establishment of penalty interest rates lower than legal penalty interest rate
- conditional application of interest by a notification procedure of late payment
- provision for a longer payment term than that mentioned above from which the liability produces interest
- setting up a payment term longer than 60 days
- elimination of possibility of additional damages payment
- setting up a specific term for the issuance/receipt of invoice

The Law brings a major limitation to contractual freedom between economic operators and between economic operators and public authorities. The parties may not set the date of issuance/reception of the invoice, so any such clause is considered abusive. All abusive clauses are penalised by the law with absolute nullity.

The Law does not apply to payment obligations due under contracts concluded between economic operators and between economic operators and contracting authorities before this Law enters into force.

**ORDER 393 dated 27 March 2013 to amend Ministry of Finance Order 752/2006 to approve issuance procedures for fiscal certificates for legal entities and individuals, State budget liability certificates as well as their model and content (OG 185/2013)**

Application for a tax certificate has a new template that includes information about:

- Shareholder data if he/she requests issuance of a certificate
- A new section whereby inclusion in the tax certificate of some information on status of fiscal liabilities may be requested, such as: enforcement procedure, suspended from enforcement procedure, etc.
- It is established that partners of an association may apply for a tax certificate for their company
- If the application is submitted to a fiscal authority other than the one in charge of fiscal liabilities of the taxpayer, the application is submitted ex officio to the competent fiscal authority within 2 days from the date of receipt.
- Application for issuance the tax certificate may be transmitted by remote means of electronic transmission accompanied by a copy of the document issued by the contracting authority, as appropriate. In this case, the application must contain the information regarding payment of the extrajudicial stamp fee.

The order enters into force starting 1 May 2013.

**The payment term in commercial contracts with public authorities can not exceed 60 days**

We welcome the initiative to include the application for a tax certificate among documents which may be transmitted by remote means of electronic transmission. It becomes important that "Fisa sintetica" (position of the taxpayer in tax authority books) of the taxpayer be reconciled; otherwise, it will be necessary to go and deal with the competent tax authority in order to obtain the certificate.

### **DECISION 139 dated 3 April 2013 amending and supplementing Methodological Rules for application of Government Emergency Ordinance 60/2011 on approving Mihail Kogalniceanu Programme for small and medium size enterprises (OG 198/2013)**

Amendments/clarifications are brought to the rules for application of Mihail Kogalniceanu Programme for small and medium size enterprises (SMEs). This is a governmental programme which has the scope of granting credit line facilities of up to RON 400,000 per SME per year (previously RON 125,000) with fully subsidized interest expense (previously partially subsidized) and/or if applicable, State guarantee for the loan, which is aimed to sustain SMEs in access to financing and meeting short term financing needs (1 year) in order to carry out business activity.

For the year 2013 the amount of the subsidy is RON 16.115 million, and the threshold of guarantee which may be granted in the year 2013 is RON 300 million. After consumption of the allocated annual budget, within the limit of the threshold, only guarantee facilities through the Mihail Kogalniceanu Programme for SMEs for new beneficiaries and for extensions of credit lines may be granted.

The amount of the credit line shall not exceed 30% of previous year turnover, if the beneficiary has in progress other short term credit facilities, or not exceed 50% if the beneficiary is not operating on other short term credit facilities.

SMEs in the following sectors/domains are not eligible for the Programme: financial and insurance intermediaries, real estate transactions, gambling and betting, production of or trade in weapons, ammunition, explosives, tobacco, alcohol, products in the energy sector, substances under national control, plants, substances for and preparation of narcotic drugs and psychotropic medication, rental and lease activities, investigation and security as well activities excluded by European Norms in which de minimis assistance cannot be granted.

Enrolment in the program and request of the possible agreement for subsidized interest expense in this Programme are made on-line on the website of the Ministry of Economy, by filing an on-line form.

Analysis of the application and notice of acceptance or rejection shall be made within 30 days of submission date. The list of SMEs accepted into the Programme is submitted by the Ministry of Economy to the credit institution chosen by the applicant for funding.

We remind that as per Emergency Ordinance 60/2011, SME are eligible for this programme if, at loan approval date, they meet all of the following criteria:

- they are not facing difficulties according to point 9 of the EU Commission Communication – Community Guidelines on State Aid for rescuing and restructuring firms (2004/C 244/02), published in the European Union Official Gazette, series C, no. 244/2 dated 1st October 2004;
- in cases where a decision to recover public assistance was issued against them, and where this decision was already enforced and the receivable fully collected;
- they are not in litigation - being sued - by the Ministry of Public Finance, the Ministry of Economy, Commerce and Business Environment or credit institutions with whom they cooperate;
- the amount of de minimis assistance they benefitted from during a period of 3 fiscal years (the 2 previous fiscal years plus the fiscal year in progress), including assistance granted through this Programme does not exceed the RON equivalent of Euro 200,000, or Euro 100,000 for SMEs which carry out activity in the road transport sector;
- they are not disclosed in the database of the Central Organisation for Banking Risks with past due loans;
- they are not disclosed in the database of the Central Organisation for payment incidents regarding cheques and bills of trade during the previous 12 months;
- no insolvency procedure is opened against them on the basis of Law 85/2006 regarding Insolvency Procedures, with its further amendments and complements;
- they present collateral guarantees for at least 40% of the loan amount to the financing credit institutions;
- they have at least 2 consecutive years of activity;
- amounts drawn from the line of credit can only be used for:
  - o procurement, production and distribution expenses;
  - o expenses for performing work and/or providing services;
  - o expenses for building, processing and selling inventory;
  - o other types of expenses necessary to carry out current activity;
  - o payroll expenses and other assimilated expenses;
  - o payment of taxes, contributions and other amounts owed to the consolidated General Budget;
  - o Other operating costs.

### **ORDER 378 dated 1 April 2013 amending and supplementing Instructions for applying Title IX of Government Ordinance 92/2003 on Fiscal Procedure Code, approved by ANAF Presidential Order 2.137/2011 (OG 199/2013)**

The order brings amendments to instructions for applying Title IX of the Fiscal Procedure Code – Resolution of challenges against tax administrative acts, as follows:

- The file of the challenge must include proof of communication for the challenged administrative act. So far, legal provisions established that this file must only contain:
  - o the challenge, which is signed by the entitled person, and stamped, when the entity making the challenge is a company;




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**New financing facilities for IMM under Mihail Kogalniceanu programme**

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- o power of attorney in original or a certified copy, as the case may be;
- o the act designates the particular administrator/ judicial administrator/liquidator,
- o the tax administrative act challenged (copy), and its annexes;
- o copies of documents relating to the case in the resolution;
- o the documents submitted by the person making the challenge and
- o a criminal referral in copy, if necessary.



- ☑ It is established that withdrawal of the challenge may be made in whole or in part.
- ☑ Jurisdiction for resolving the challenge may be appointed to another body in conditions laid down by ANAF Presidential Order. Entities making the challenge and entities entered in the resolution procedure of the appeal will be informed in this regard.
- ☑ Where from the date of the challenge and before solving the challenge, jurisdiction for the administration of the taxpayer making the challenge has changed, the body which issued the challenged act is obliged to transmit the original document of the resolution to the new tax body in charge of the taxpayer for the purposes of its enforcement.
- ☑ There is cancelled the term of 10 days when Ministry of Public Finance directions were required to communicate points of view at the request of fiscal bodies for resolution of challenges.

**ORDER 450 dated 19 April 2013 approving Instructions for applying Title IX of Government Ordinance 92/2003 on Fiscal Procedure Code (OG 236/2013)**

In summary, we present the main issues in applying title IX - Resolution of challenges to administrative acts (articles 205-218) of the Fiscal Procedure Code.

**Possibility of challenge**

Any entity which files a challenge for lack of a tax administrative act must prove its rights or legitimate interests have been harmed. Lack of a tax administrative act means the failure to issue a tax administrative act by the appropriate taxation authority within the legal time period. Decisions on tax bases may only be appealed by challenging the decision related to the tax base. Tax assessments issued afterwards which are based on decisions related to the tax base may not be appealed.

**Template and content of challenge**

Where the entity making the challenge specifies that the object of the challenge consists of the challenged tax administrative act, without, however, mentioning, within the legal time period for resolution, the challenged amount, individualised for each tax, customs duty, contribution, and related supplemental calculations, or measures which they dispute, the challenge is considered to be formulated against the entire tax administrative act.

Where the challenge is formulated by an empowered person, competent fiscal resolution bodies will check the power of attorney and, where the entity making the challenge is under insolvency procedure/liquidation/bankruptcy/reorganization, the challenge must bear the signature and stamp of the special administrator/director or liquidator, as appropriate.

Where the challenge does not comply with requirements for submission (the power of attorney in original or a certified copy, signature and stamp), the competent fiscal bodies will require the entity making the challenge to meet these requirements by means of a registered letter with confirmation of receipt, within 5 days of notification. Otherwise, the appeal will be dismissed.

**Deadline for submission of challenge**

The challenge shall be submitted to the fiscal body which issued the challenged administrative act, and the fiscal body which issued the tax administrative act, will draw up a challenge file, as well as the report with proposed solutions.

The file on the challenge must include:

- ☑ the challenge, which was supposed to be signed and stamped by the empowered person, when the entity making the challenge is a company;
- ☑ power of attorney in original or a certified copy, as the case may be;
- ☑ the acts which designates the particular administrator/judicial administrator/liquidator;
- ☑ the tax administrative act challenged (copy), and its appendix;
- ☑ proof of the challenged administrative act showing the date on which it was communicated,
- ☑ copies of documents related to the case;
- ☑ documents submitted by the person making the challenge and a criminal referral in copy, if necessary.

Provisions concerning terms of the Civil procedure code shall apply accordingly, thus, the deadline for submission of a challenge is calculated on "full day basis" except where otherwise provided by law, thus not taking into account the starting or ending day.

**Withdrawal of challenge**

Withdrawal requests must be signed by the entity making the challenge, or by the empowered person, under the same conditions as the challenge submitted. Individuals will attach a copy of their identity card to the withdrawal request.

**Resolution decision**

For resolution of the challenge, the competent ANAF body shall rule on the decision. The decision issued to solve the challenge is final in respect of administrative means, meaning that the competent resolution body in charge can not modify the decision, except for cases when material errors as per law are to be corrected and the decision is mandatory for the fiscal bodies that issued the tax administrative act

**Suspension of resolution procedures for challenge**

If the resolution of the challenge is suspended, pending resolution of a penal case, the competent body will resume the administrative procedures regarding the challenge only after permanent withdrawal and the enforceability of the reason that prompted the suspension.

**Amendments  
on challenges  
resolution**



### Solutions for the challenge

The challenge may be rejected as:

- unfounded, the arguments of fact and law submitted in support of the challenge are not such as to alter the act ordered by the challenged tax administrative act;
- unjustified, if the entity making the challenge does not present factual and legal arguments in support of the challenge or the arguments made are not the cause of incidents under the resolution;
- being without object, where the challenged amounts/measures were not established by the challenged administrative act or further to resumption of proceedings - taking note of the solution pronounced by the Criminal Court - it is found that the challenge remains without object
- Inadmissible, when challenged tax decisions were issued according to decision on the tax basis, considering provisions of art. 205 para. (6) of the Fiscal Procedure Code.

These solutions are not limited to provisions of this Order.

### Rejection of the challenge for failure of the procedural conditions.

The challenge may be dismissed as:

- not submitted in due time, in the event that it was submitted beyond the period prescribed by law;
- submitted by a person who does not hold the quality to challenge in case challenging has been formulated by a legal entity or individual who is not entitled to do so;
- submitted by a person who has no practicing capacity, as per law;
- lack of interest in case the taxpayer who challenges does not demonstrate that its rights or legitimate interests have been harmed;
- prematurely formulated in case the challenged amounts are not disclosed separately in liability certificate and in case the decision regarding taxation base has not been issued.

### Notification of decision and appeal

The resolution decision of the challenge shall be announced by means of communication of tax administrative act provided for in article 44 of the Fiscal Procedure Code.

Source: DGFP Valcea

### LAW 100 dated 12 April 2013 to approve Government Ordinance 16/2012 amending and supplementing GO 92/2003 on Fiscal Procedure Code (OG 211/2013)

The law approves GO 16/2012 which has brought amendments to the Fiscal Procedure Code and introduces a new amendment, as follows:

- When a fiscal statement is submitted within the legal term and the electronic message sent by the system of information exchange indicates that it has not been validated following detection of errors upon submission of the statement, the date of the submission of the statement shall be the date of the initial message in case the taxpayer submits a valid statement through the last day of the deadline month.

### ORDER 339 dated 28 March 2013 to approve ex officio registration Procedure and ex-officio deregistration Procedure in/from the Register of taxable entities which apply the VAT cash accounting system, as well as template and content of some forms (OG 203/2013)

The order approves the procedure and necessary forms used for registration of the entities which had the obligation and were not recorded in the Register of taxable entities which apply the VAT cash accounting system and the Procedure of ex-officio deregistration.

We remind that in a situation where an entity has the obligation to register as a taxable entity which applies the VAT cash accounting system and has not done so, for the period between the date on which it must register and the date on which it is registered ex officio:

- the entity concerned shall apply the rules that apply to the VAT cash accounting system;
- Entities which do not apply the system but make purchases from those entities will deduct VAT.

We remind that in a situation in which an entity having the obligation to request deregistration from the register and did not do so during the period between the date on which it was to be deregistered and the date when is deregistered ex officio:

- the entity concerned applies the normal VAT system
- entities which do not apply the system but make purchases from those entities will deduct VAT at payment date.

### ORDER 342 dated 29 March 2013 amending and supplementing Annexe 1 to ANAF Presidential Order 1.221/2009 regarding the procedure for approving the derogatory regime (OG 194/2013)

The amendments allow individuals to apply the derogatory reporting regime, by submitting an application accompanied by proof of registration of temporary inactivity with the Trade Register or with the professional organizations that have issued documents.

We remind that application of the derogated reporting regime is possible during temporary inactivity (suspension) entered in the Trade Register and that upon application of the derogated reporting regime, taxpayers are exempt from filing the following forms:

- Form 100, "State budget liability return"
- Form 101, "Profit tax return"
- Form 112, "Return regarding social contributions, income tax and nominative list of insured persons"
- Form 104, "Statement of allocation of income and expenses between associates"
- Form 120, "Excise return"
- Form 130, "Tax return on crude oil from domestic production"
- Form 300, "VAT return"




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**Derogatory  
reporting regime  
is also available  
for individuals**

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## Outsourcing the payroll function

We have proposed that starting with this anniversary edition of the APEX Team newsletter to publish a series of articles about us, the people behind the APEX logo, services we offer, our vision and work carried out inside a consulting company. We can call it somewhat of an "open door". We would like to point out how a person participating in a seminar held by APEX summed it up: "A company works with people, and with such people, it is not at all hard to reach the top of the pyramid"

In this article, we present an interview with Carmen Olaru, Partner in the Payroll Department of APEX, with over 18 years' experience in HR and payroll, an excellent teacher and trainer in the seminars held by APEX.

**Reporter:** *You have extensive experience in payroll and human resource services; what can you say about this issue to our newsletter readers?*

**Carmen Olaru:** Indeed, I worked in this area for over 18 years. Over time, I have not only been involved in providing payroll and human resource services to clients but also social audit missions, "due diligence" missions, together with colleagues in the accounting department, assistance in setting up and implementing payroll software or teaching courses on labour law and payroll practice topics.

**Reporter:** *What was the biggest challenge you ever met?*

**Carmen Olaru:** Certainly there have been many, but two of them marked my professional experience in particular. One refers to the establishment of working procedures and to set up the payroll program with which we work, for a client with 6,000 employees. The second was related to the implementation of a programme of wages, a total unknown, for a client with 3,500 employees. Although we are talking about two totally different situations, in both projects, I tested my knowledge, patience and desire to satisfy all requests and needs of clients.

**Reporter:** *Is it easy to provide payroll and human resource services and in Romania?*

**Carmen Olaru:** The most difficult part is the frequent legislative changes, extremely complex in recent years, especially when there's a matter which is poorly regulated or unregulated. It often happened that the legislative changes only show the classical cases, without looking at the overall diversity in practice. That's why we focus on finding and offering the best and fastest solution, because many times, implementation of changes should be done "today for tomorrow" or even "today for today".

**Reporter:** *What would be the benefits of outsourcing payroll and human resource services?*

**Carmen Olaru:** When outsourcing is done with sense of responsibility and in accordance with the specific needs of the company, it can bring many advantages. First of all, outsourcing various services, in this case those of payroll, give the possibility for company management to organize current activities more effectively. An advantage would be access to the experience, resources and know-how to service providers, simplifying business processes for the company, as well as the efficiency in terms of time. Another advantage would be the exemption of liability for the accuracy of the calculation of the salary statement, payroll taxes and contributions. Then there are the avoided costs associated with training employees responsible for payroll calculations as well as software update costs. With payroll outsourcing, employees receive salaries and payslips on the scheduled date, and at the same time the confidentiality level of salaries and bonuses for all employees is preserved. Advantages include the fact that the service provider is responsible for mistakes in applying the law, if any, and paying any fines, interest or penalties. Of course, this happens within the limits of information made available by clients and to the extent that infringement occurred solely due to the supplier.

**Reporter:** *You mentioned above some examples of clients having 3,500 and 6,000 employees. What are the categories of companies in term of number of employees to which APEX payroll services are addressed?*

**Carmen Olaru:** In our portfolio we have over 100 customers to which we provide payroll services. Some of them are common clients of payroll and accounting department. There is a great variety in terms of number of employees. We also have in our portfolio small businesses having between 1 and 10 employees. The medium size businesses are ranging over 10 to hundreds of employees and in top of size there are large companies reaching thousands of employees. What I can emphasize is that we pay equal attention to a small client as for a medium or large client. Important for us is to have satisfied customers and to adapt to their specific requirements. I would add that our portfolio companies are both of Romanian origin as well as multinational companies from European Union, USA, Asia.

**Reporter:** *Why should APEX Team International be chosen for outsourcing payroll and human resources?*

**Carmen Olaru:** Because APEX Team International is a team of experienced consultants, managers who have a portfolio of satisfied clients. Professionalism and high quality services are our calling card. We have flexible procedures, assuming responsibility regarding accuracy of services provided. Also, we are responsible for interaction with State institutions, we provide assistance in case of tax audit and inform our clients about legislative changes. We are proactive and make recommendations to our clients to improve their business and to reduce costs. Thanks to the experience acquired over time, payroll services and human resources are fluid, being easy to implement for both clients and for us.

**Reporter:** *We reached the end of our short interview, we would like to thank you for your time and to wish you success in your activity.*

## ORDER 512 dated 16 April 2013 approving the Compensation Procedure according to article VI of Government Emergency Ordinance 12/2013 to set certain financial and fiscal measures and extension of certain terms (OG 232/2013)

The order approves the compensation procedure for reciprocal obligations of administrative-territorial units and of economic operators which have outstanding obligations to the local budget.

In case an administrative-territorial unit acts both as debtor for outstanding liabilities recorded by an economic operator and as creditor for unpaid tax liabilities to the local tax jurisdiction budget of the relevant economic operator, the unit in question may settle mutual obligations up to the limit of the lower value of the mutual claims.



Outsourcing  
payroll function  
a solution for  
optimisation of  
costs of an  
enterprise



If the cash position of local budgets are not adequate to settle outstanding liabilities registered against an economic operator, units of the State Treasury provide temporary balancing of the budget gap caused by settlement of these liabilities, from the State Treasury Current Account.

**ORDER 1534 dated 11 April 2013 amending Appendix of ANAF Vice-Presidential Order 2.028 to establish unique EU form to declare cash on hand at Community borders (OG 235/2013)**

**ORDER 416 dated 1 April amending and supplementing Methodological Rules on preparation and submission of quarterly financial statements for Public Sector, as well as for monthly financial reports for the year 2009, approved by Order of the Ministry of Public Finance 629/2009 (OG 190/2013)**

**ORDER 426 dated 2 April 2013 to complete OMFP 33/2012 for approval of Certification Procedure for statement on non-deductible VAT related to expenses included in the refund application, as well as well as template and content of the form, "Certificate for non-deductible VAT related to expenses included in the refund application" (OG 203/2013)**

It is established that in the case of projects funded through the grant/strategic sector operational programme, "Human resource development", the order applies to projects currently in progress as at 10 August 2012, as well as for projects submitted after that date. We remind that this order stipulates that entities applying for refund, as eligible expenses, the non-deductible VAT, must submit a statement to the Managing Authority or Intermediate Body where the applicant declares that this is not deducted and ANAF must certify this statement within 3 days.

**ORDER 435 dated 3 April 2013 regarding the power of Attorney for persons within the economic-financial inspection body to ascertain contraventions and to apply penalties provided for by Government Emergency Ordinance 109/2011 on corporate governance of public companies (OG 204/2013)**

The persons within the economic-financial inspection body will be empowered to check contraventions and to apply penalties as per provisions of art. 59 paragraph no. (2) of Government Emergency Ordinance 109/2011 on corporate governance of public companies.

**REMINDER – Adjustment to taxable profit regarding closed fiscal years to correct accounting errors**

We remind that in accordance with provisions of the Fiscal Code (article 19) and Norms for application of the Fiscal Code, revenue and expenses which were inaccurately recorded or omitted are corrected by adjusting taxable profit for the tax period they refer to.

When improper recording or omission of revenue or expense is discovered after submission of the annual profit tax return, **the taxpayer must submit an adjusted profit tax return (form 101) for the year it refers to**. In case this adjustment triggers an additional tax to be paid, the taxpayer is also subject to interest and penalties for late payment of this additional tax in accordance with the law.

**REMINDER – Employer duties regarding labour protection and health in the workplace**

Among its duties, the employer must take the necessary steps to:

- Ensure safety and protect employee health by performing a mandatory medical examination by a physician specialised in labour medicine upon hire and also with a mandatory annual medical check-up;
  - Prevent occupational risks by informing and training employees through assessment of specific risks for each work position in terms of health and safety in the workplace and through mandatory training in accordance with norms set by Law 319/2006 regarding health and safety in the workplace. In addition, the employer must maintain individual docketts on work protection and individual training docketts regarding emergencies. Instruction and maintenance of individual docketts may only be made by legal or natural persons licensed to carry out their activity in the domain of health and safety in the workplace;
  - Provide an organisational framework and resources necessary for workplace safety and health.
- Measures regarding safety, health and hygiene in the workplace cannot be undertaken at the employee's expense.

**INFORMATION – Complete and submit form 201, "Statement of income obtained abroad"**

Form 201 is completed and submitted by resident Romanian individuals having their domicile in Romania and by persons who meet for the year being declared the condition set at article 40 point (2) of Law 571/2003 – Fiscal Code, correlated with provisions of article 7 point 23 and who obtained income abroad, taxable in Romania, further to performance of activities abroad such as income from professions, income from commercial activities, income derived from intellectual property, rental income, agricultural income, dividends, interest, prize and gambling income, gains on disposal of personal real estate, gains on disposal of securities, gains on forward foreign currency contracts and similar operations, other investment income, pensions as well as other taxable income as per Title III of the Fiscal Code.

The statement is also submitted by resident Romanian individuals having their domicile in Romania and by individuals who met for the year to declare the condition set at article 40 point (2) of Law 571/2003 – Fiscal Code, correlated with provisions of article 7 point 23 and who carry out an employee activity abroad and who are paid for the employee activity performed abroad by or on behalf of an employer which is resident in Romania or by a permanent establishment in Romania (employee income represents




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**Adjustments made to prior year accounts should trigger an adjusted profit tax return (form 101)**

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a tax allowed expense of the permanent establishment in Romania) in the case where this same employ- ee income was taxable both in Romania and abroad.

We remind the conditions of residence defined by article 7 point 23 of the Fiscal Code.

A resident individual is a person who meets at least 1 of the following conditions:

- has his/her domicile in Romania;
- the centre of his/her vital interests is located in Romania;
- is present in Romania for one or several periods which exceed a total of 183 days for any period of 12 consecutive months ending in the calendar year concerned;
- is a Romanian citizen who works abroad as public servant or employee of Romania in a foreign State.

By exception to provisions of letters a) - d), the following individuals and their family members are not resident individuals: a foreign citizen with the status of diplomat or consul in Romania, a foreign citizen who is a civil servant or employee of an international or intergovernmental organisation registered in Romania, a foreign citizen who is a civil servant or employed by a foreign State in Romania.

Income obtained abroad by individuals during the declaration year as well as related tax paid abroad, denominated in the currency of each State, will be translated into RON at the annual exchange rate communicated by the National Bank of Romania for the year when income is obtained.

**INFORMATION – 1st May, legal holiday**

As per the Labour Code, 1<sup>st</sup> May is a legal holiday. Employees who work on 1<sup>st</sup> May can recover hours worked with the same number of idle hours within the next 30 days. If for grounded reasons, free time cannot be granted, the employee will receive double pay for work performed on 1<sup>st</sup> May, considering the base salary for work performed during standard business hours.

We remind that starting 1<sup>st</sup> May 2011, when the amended Labour Code entered into force, overtime is compensated by an equal amount of free time within the subsequent 60 days. If such compensation is not possible, the employee benefits from additional pay for overtime which is set in the collective labour contract or, if applicable, in the individual labour contract which cannot be less than 75% of base salary for standard hours.

**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 April 2013:

1 EUR = 4.3237 RON; 1 CHF = 3.5320 RON; 1 GBP = 5.1289 RON; 1 USD = 3.3075 RON.

**MAY 2013 – 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 register contracts concluded during the month for services rendered by non-residents, with tax authorities as per article 8 point 7<sup>1</sup> of the Fiscal Code
- To revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month
- To organize a stock count of inventories if the enterprise does not use a perpetual inventory system
- To issue final invoices for the month of May 2013

**To comply with requirements regarding VAT**

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

**During the month - do not forget**

**That Wednesday 1<sup>st</sup> May is a legal holiday (Labour Day)**

**That Monday 6 May is a day off (Easter Monday)**

**That Thursday 9 May 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 April 2013. Starting May 2013, VAT returns shall be submitted monthly.



**1 May  
legal holiday**



### That Friday 10 May 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 a calendar year, do not exceed the exemption threshold set at article 152 of the Fiscal Code (form 096).

### That Friday 10 May is the last day to pay

- Hotel tax
- Advertising service tax

### That Wednesday 15 May is the last day to submit

- INTRASTAT statement for April 2013 (standard or extended, submitted on-line)
- Statement of acquisitions and supplies in the field of energy in April 2013.

### That Monday 27 May 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/acquisition/services (form 390)\* for April 2013
- Informative Statement on domestic supply/services rendered and acquisitions regarding April 2013 (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 ("ecotax" excluded)
- Return regarding income obtained in 2012 by individuals per category and source of income (form 200 and 201)
- Form 200\*, "Statement of income obtained in Romania," is submitted by individuals who derive income from independent activities, rental income (except rental of agricultural land), gains on disposal of securities, and gains on forward contracts of foreign currencies.
- Form 201, "Statement of income obtained abroad," is submitted by taxpayers who obtained abroad income from professions, commercial activities, rental income, dividends, interest, prize and gambling income as well as other income obtained abroad.
- Return regarding estimated income/income quota for the current year (form 220)
- Return regarding income from agricultural activities taxed on income quota (form 221) for the current year
- Application regarding destination of amount representing 2% of the annual income tax.** Form 230 is to be filed by individuals who obtained salary income in 2012 and wish to **sponsor** legal non-profit entities in the amount of up to 2% of annual tax. Form 230 is also used to apply for deduction of expenses for the purpose of realising collective savings in the rental field.
- Statement of estimated income for associations which are not legal entities and for entities subject to the regime of fiscal transparency (form 223)
- Return regarding the amounts resulting from VAT adjustment (form 307)
- 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)

### That Monday 27 May is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole account – **State Budget**
  - Tax on crude oil and natural gas from domestic production
  - Withholding tax on non-resident income
  - Income tax on salary (*separate bank transfer for headquarters and each secondary establishment*)
  - Tax on income from independent activities, withheld at source
  - Tax on dividends paid in April 2013
  - Tax on interest income
  - Tax on investment income
  - Tax on pension income
  - Tax on income from prizes and gambling
  - Tax on income from other sources
  - Contribution for non-employment of disabled persons for employers with headcount over 50
- Liabilities to the sole account – Public Insurance Budget and special funds
  - Social security contribution (*pension*)
  - Health insurance contribution
  - Medical leave contribution and health insurance allowance
  - Unemployment contribution
  - Contribution to fund to guarantee payment of salary liabilities
  - Contribution to work accident and occupational disease fund
- Contribution to Environment Fund ("ecotax" included)




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**Do not forget  
the deadlines to  
submit the tax  
returns or to pay  
the taxes**

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- ☑ Quarterly contribution for medicine for Quarter I 2013

**That Thursday 30 May is the last day to submit**

- ☑ to ANAF the annual accounting report\* for entities which have opted for a financial year different from calendar year as per article 27 (3) of Accountancy Law 82/1991 republished and for sub units opened in Romania by resident companies in EEA States
- ☑ Annual Financial Statements\* as at 31 December 2012 for commercial companies, national companies, "regii autonome," national institutes for research and development;
- ☑ Annual Financial Statements\* as at 31 December 2012 for sub units in Romania which belong to legal entities with headquarters abroad, except for sub units opened in Romania by resident companies in EEA States.



**IMPORTANT**

Once the 2012 financial statements are submitted, the very last operations to complete accounting and fiscal evidence of the year are:

- ☑ Complete the Register of fiscal evidence;
- ☑ Maintain the Inventory Register;
- ☑ Check that the minutes of the inventory committee and decisions for writing off assets are signed;
- ☑ Archive the primary accounting documents (which usually ought to be kept for 10 years except for the list of the exceptions set by Order 3512–Official Gazette 870/2008 to be kept 5 years). Retention period for financial statements has been reduced to 10 years per Law 259 (Official Gazette 506/2007). Mandatory accounting registers, i.e. the Journal Register, Inventory Register and General Ledger are kept within the enterprise for 10 years. Payroll statements are to be kept for 50 years.

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 May  
deadline for  
submission of  
annual financial  
statements**

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## KEY HR FIGURES

2013 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 2,223 = RON 11,115) <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) <sup>3</sup>	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 750) for every 100 employees	
Minimum monthly gross salary as per Government Decision 23/2013	RON 750	
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 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: The contribution to the fund to guaranteed payment of salary liabilities is also to be calculated for health insurance allowances but only in respect of the first 5 days of temporary incapacity of work supported by the employer as well as for allowances for temporary incapacity of work further to a work accident or occupational disease but only in respect of the first 3 days of temporary incapacity of work supported by the employer.

Be Aware! Income paid to a person who carried out an activity considered dependent activity (example: in-house "captive" PFA or who meets at least 1 of the 4 re-qualification criteria mentioned in OUG 82/2010) is disclosed on a separate "Payment statement" and is included on form 112.

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**Our Mission:  
Adding Value to Client's Business**

*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