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## Contents:

- Amendments to Fiscal Code and Fiscal Procedure Code
- European Court of Justice Decision – Intra-community transfers and non-transfers
- New regulations on the sale of agricultural land situated outside buildable area
- Environment fund for packaging/used tires/oil waste
- VAT refund for non-residents outside the European Union
- New regulations on associations and foundations
- Amendments regarding unemployment insurance
- Amendments regarding day labourer legislation
- Other fiscal/tax news
- Reminder – mandatory documentation of accounting policies
- Tax exemption applicable to income representing dividends obtained by non-residents
- Re-direction of 2% of income tax
- Deductibility of interest
- “Easter presents”
- Retention of 2013 documents
- Closing exchange rates for March 2014
- Agenda for April 2014
- Social Indicators

## **EMERGENCY ORDINANCE 8 dated 26 February 2014 to amend and complement several fiscal and budgetary laws (Official Gazette 151/2014)**

Ordinance brings amendments and complements to the Fiscal Code and Fiscal Procedure Code. We present the main changes below:

### **FISCAL CODE**

#### **Corporate tax**

##### **Non-taxable income**

Companies which are not resident in a country with which Romania has concluded a tax treaty are excluded from application of the favourable holding provisions introduced as of 1 January 2014. Consequently, income derived by these companies from the sale/assignment of ownership equity held in a Romanian company will be taxable.

##### **Income tax**

The Ordinance allows taxpayers/associations without legal status, carrying out agricultural activities, which determine their taxable income based on income thresholds and owned properties in different localities, to choose the locality/localities where they can benefit from the non-taxation of income according to each group of products.

##### **Tax on income obtained by non-residents**

Provisions of European Union legislation are also applicable for payments between Romania and countries which have agreements in place with the European Union that provide measures similar to those provisions.

The reimbursement procedure for taxes withheld at source has been eliminated from the Fiscal Code and included in the Fiscal Procedure Code to ensure uniformity of reimbursement procedures.

An important change is the elimination of the income payer obligation to submit rectifying tax returns to amend withholding tax refunded to non-residents. They can regulate the amounts refunded in relation to the current tax obligations of the same type. Income payers are required to correct the informative statements corresponding to the corrections made. Refund of the withholding tax can be performed by the relevant tax authority if the payer of the income no longer exists.

##### **Value added tax**

##### **New VAT regime for telecommunications, broadcasting, television and electronically supplied services, applicable as of 1 January 2015**

The changes bring Romanian law into line with new EU legislation which takes effect starting 1 January 2015.

Consequently, beginning 1 January 2015, these services will be taxable at the location where the beneficiary is established or where it has its usual residence, for services provided to non-taxable persons (i.e. individuals).

In this respect, the VAT rate from the country where the beneficiary is established applies.

In order to avoid VAT registration for suppliers of such services in each Member State where the beneficiary is established, legislation provides the possibility of applying the "mini one-stop-shop" regime. Thus, suppliers established within the Community will collect VAT at the rate applicable in the Member State where the beneficiary is established, without the supplier having to register in that state, with VAT declaration and payment being performed in the Member State where the supplier is established. Suppliers established outside the Community which provide such services to non-taxable persons within the European Union will be required to register with a single Member State in order to declare and pay the VAT related to these services, at the VAT rate applicable in the Member States where the respective beneficiaries are established.

Providers applying the "mini one-stop-shop" regime are required to submit, on a quarterly basis, a special VAT statement for all services rendered to non-taxable persons established in the European Union.

##### **Additional VAT liabilities imposed by decisions whose execution is suspended**

Additional VAT liabilities imposed on taxpayers during tax audits by decisions whose execution has been suspended by local courts are not to be taken into consideration throughout the entire period in which the execution of these decisions is suspended, when determining the VAT payable/recoverable position of the taxpayer.

These amounts are to be included in the VAT return for the reporting period in which suspension of execution of the decisions has ceased.

##### **Late submission of affidavits for applying the reverse charge mechanism for acquisitions of electricity**

For supplies of electricity, where buyers failed to provide relevant affidavits to tax authorities by 10

December 2013, they may now be submitted by **31 March 2014**. These affidavits are available for all purchases performed during the calendar year the affidavits refer to. Provisions mentioned above are also applicable to buyers that obtained a license to supply electricity during the 10 December 2013 – 31 December 2013 period.

Moreover, suppliers of electricity should not apply the reverse charge mechanism if, at the date of supply, beneficiaries have not been included in the "Registry of Taxpayers which have Submitted Affidavits", available on the website of the tax administration (ANAF).

However, for affidavits submitted late, suppliers may issue credit notes, to apply the reverse charge mechanism, upon beneficiary request.

### **FISCAL PROCEDURE CODE**

#### **Certification of tax returns**

Certification of annual tax returns became optional starting 28 February 2014, and consequently, annual tax returns to be submitted by 25 March 2014 are no longer require certification.

For the certification to be valid, the fiscal consultant must be an active member of the Fiscal Consultants and Fiscal Consultancy Companies Register.

Certification of tax returns will constitute a criterion in the risk analysis performed by tax authorities when they select taxpayers for tax audits

#### **Late payment interest**

Starting 1 March 2014, the late payment interest for fiscal liabilities are reduced to **0.03% per day of delay** (from 0.04%). The level of penalties remains at 0.02% per day of delay. Thus, currently, a combined 0.05% per day is owed for late fiscal liability payments.

You can simulate the calculation of interest and penalties using the online calculator from our website, [www.apex-team.ro](http://www.apex-team.ro)

#### **Fiscal secrecy**

Information about taxpayers can now be provided by fiscal authorities upon request, but only on presentation of a written agreement from the taxpayer. Until now, this kind of information was provided only to other state authorities.

#### **Proof**

The Ordinance introduces provisions for proof that may be used to determine a fiscal event. The Ordinance states that acceptable proof can include audio-video recordings, data and information in any form of storage, as well as other proof which is not prohibited by law. When determining a fiscal event, tax authorities may immediately decide to perform an overall tax audit, either on-the-spot or theme-based.

#### **Automatic exchange of information**

To apply automatic exchange of information between tax authorities within the EU, taxpayers making payments to non-residents (salaries, income paid to administrators or other assimilated persons, life insurance income and pensions) must submit a tax return declaring this income no later than the end of February of the current year, for the previous year.

Non-residents of EU Member States deriving income from real estate property in Romania must submit a tax return declaring this income no later than 25 May of the current year for the previous year. For this purpose, local authorities must provide information to ANAF about the real estate owned by residents of EU Member States in that specific area. According to the Ordinance, EU Member States residents who acquired real estate in Romania before 28 February 2014 must submit this tax return no later than 30 June 2014.

#### **Obligation to mention identification data for tax advisors, auditors, experts in the content of documents signed by them**

According to the new regulations, whenever a taxpayer submits a document to tax authorities signed by an individual or by a legal entity carrying out a regulated activity (fiscal advisory services, financial audit, accounting expertise, evaluations), the document must contain the signator's identification information.

#### **Inactive taxpayers**

One condition of reactivation of an inactive taxpayer regarding payment of all outstanding tax liabilities has been changed.

Prior to the current changes, taxpayers were required to fulfil all payment obligations to obtain reactivation. In this respect, more favourable conditions for inactive taxpayers eligible for rescheduling payment of tax liabilities are available, clearing the way to be reactivated.

#### **Procedure for anti-fraud audits**

A new title has been introduced to establish the procedure for carrying out operative on-the-spot tax audits to help ensure better functionality of the Anti-fraud General Directorate.

#### **Selection of taxpayers for tax audit**

The Ordinance introduces the risk analysis concept, which will be used to select taxpayers for tax audits. The risk analysis procedure involves identifying risks of non-declaration and non-payment of tax obligations.

#### **Settlement of tax obligations by payment or compensation**

Clarifications are brought regarding the status of tax liabilities if the enforcement procedure is suspended. Thus, any payments made by taxpayers in this situation are not to settle tax liabilities under suspended enforcement proceedings. These debts can be settled only at the express request of the taxpayer.

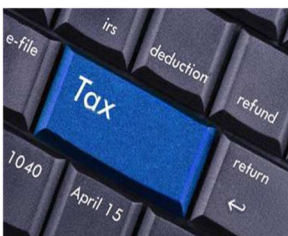
#### **Compensation of receivables**

The Fiscal Procedure Code states that taxpayers are entitled to claim receivables through compensation at the date they submit a compensation request. In the absence of the claim, the compensation will not and therefore, late payment interest and penalties may be due for tax liabilities payable to taxpayers which have not been compensated.

With the new provisions, the moment receivables can be claimed by the taxpayer in order to be compen-



**Certification of tax returns became optional**



sated changes, as follows:

- ☑ Payment date for amounts paid in excess of fiscal liabilities due;
- ☑ Date when the annual corporate tax return was submitted, if there is corporate income tax to be reimbursed following annual settlement;
- ☑ Date when annual notice of assessment is issued, for income tax to be reimbursed following the annual settlement;
- ☑ Date of distribution minutes, for outstanding amounts following foreclosure procedures.
- ☑ Date mentioned in law for submitting a tax return for amounts withheld at source following settlement;
- ☑ Date when the compensation request is submitted, for all other cases.

#### **VAT reimbursement procedure**

Reimbursement of VAT amounts up to RON 45,000 will be made with a subsequent tax inspection. For amounts exceeding this threshold, tax authorities will decide whether a tax audit will be carried out prior to the amounts being reimbursed on the basis of a risk analysis.

These provisions will not be applicable if the taxpayer has outstanding liabilities in its fiscal records or if tax authorities believe that no reimbursement is due.

This new system applies for VAT returns with a reimbursement option for the periods ending after 1 March 2014.

#### **Reimbursement of receivables withheld at source**

In cases where a payer withholds more tax than is actually due, as a rule, the amounts are refunded by the payer, upon submission of taxpayer request within the prescribed term. The amounts refunded by the payer are reconciled with other tax obligations of the same type. For reconciled income tax, payers do not file corrective statements. If the payer no longer exists, the amounts withheld in excess of the tax due according to the law are reimbursed by the competent tax authority, at the request of the tax payer.

#### **Interest rates due based on annulled tax administrative deeds or cancelled before their annulment**

According to new regulations, late interest payments will be due if the tax decision establishing fiscal liabilities has been revoked and the liabilities have already been settled prior to the decision's cancellation.

Interest payments are due starting the day when fiscal liabilities have been settled according to the tax decision through the day the tax is reimbursed or compensated.

However, interest payments will not be due if damage claims have been requested according to Law. 554/2004 on contentious administrative matters as well as if the tax decision establishing fiscal liabilities ex officio has been revoked because the taxpayer submitted the relevant tax returns.

Interest payments will be granted for tax decisions issued and revoked after 28 February 2014.

#### **New rules regarding the enforcement of garnishment in forced executions**

To settle a tax liability in a forced execution, debtors who have bank accounts can have their accounts seized 30 days after communication of the summons.

#### **Competency rules following ANAF reorganization**

According to new amendments, the specialised structure for settling tax challenges within public finance regional general offices with competence for the administration of non-residents, or where the appellant has its domicile settles challenges against tax deeds imposing tax receivables up to RON 5 million.

In the case regarding tax receivables which amount to more than RON 5 million or which were established by central inspection/control authorities, the ANAF General Office for Settling Challenges is the competent authority to settle such disputes.

The provisions are applicable for appeals submitted after 28 February 2014.

#### **Applicability**

New provisions came into force on 28 February 2014, except special provisions regarding VAT, which only apply to statements with negative amounts of VAT with an option for reimbursement, came into force on 1 March 2014, and provisions regarding interest rates also came into force on 1 March 2014.

#### **ORDER 353 dated 28 February 2014 to amend ANAF Presidential Order 1156/2009 on tax inspection badges (Official Gazette 172/2014)**

#### **ECJ DECISION dated 6 March 2014 - "Request for a preliminary ruling – Taxation – VAT – Directive 2006/112/EC – Article 17(2)(f) – Condition relating to the return of goods to the Member State from which they were initially dispatched or transported" in joined cases C-606/12 and C-607/12 Dresser Rand SA**

The ECJ Decision concerns a French company, Dresser Rand SA, which shipped its own raw materials from France to Italy, to be turned into finished products by a third party. The finished products were, subsequently, dispatched/sold by Dresser to its final customer in Spain. The company considered the movement of the goods from France to Italy as a transfer of own goods, within the scope of VAT. Italian tax authorities considered that the intra-Community movement of the goods should have been treated as a non-transfer.

ECJ ruled that for the dispatch/transport of goods not be classified as a transfer to another Member State. Those goods, after the work on them was carried out in the Member State in which dispatch/transport of the goods ends, must necessarily be returned to the taxable person in the Member State from which they were initially dispatched/transported.

This decision has confirmed that when goods are returned in a Member State other than the one from which they were initially dispatched/transported, the two intra-Community movements of goods qualify as transfers, subject to the related VAT implications.




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**VAT  
reimbursement up  
to RON 45,000 will  
be made with  
subsequent tax  
inspection**

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## **LAW 17 dated 7 March 2014 on regulations regarding sale-purchase of agricultural land situated outside buildable areas and for amendment of Law no. 268/2001 on the privatisation of companies administrating the State's publicly- and privately-owned land with agricultural destination and for the creation of Agency for the State's Domain (Official Gazette 178/2014)**



A preliminary procedure for the sale of agricultural land located outside buildable areas and the pre-emption right applicable for such purchases has been issued. The law regulates a pre-emption right for equal price and conditions, applicable in the case of a sale of agricultural land located outside buildable area.

Beneficiaries of the pre-emption right for land purchases are, in order of their priority, the following:

- co-owners;
- agricultural lessees;
- neighbouring owners;
- the Romanian Agency for the State's Domains.

In order to sell, the owners of agricultural land located outside buildable areas are obliged to file a request with the city hall for the administrative-territorial area where the land is located, requesting the publication of the offer to sell the land. The documents attached to the request will be determined by the law's implementing regulations.

The city hall must then display the offer to sell on its premises or on its official website for 30 days and communicate the offer to the central or regional structures of the Ministry of Agriculture and Rural Development (depending on the land surface area) for display on their website for 15 days.

Holders of pre-emptive right have 30 days from the date of the offer is displayed to express, in writing, their intention to purchase.

If pre-emptive right holders express their intentions to purchase, the sellers sell to whichever has the highest priority.

If there is no interest from pre-emptive right holders, the sale can proceed with another buyer under the conditions provided by the previous sale offer, with the sellers having to notify city hall in this respect.

The sellers have to obtain permit from the Ministry of National Defence for the transfer of ownership regarding agricultural land outside buildable areas:

- within a distance of 30 km inside the state border and the Black Sea shore;
- within a distance of 2,400 km from the special units.

The permit of the Ministry of Culture is also required in order to transfer ownership of agricultural land outside buildable areas:

- where archaeological sites are located;
- where archaeological heritage areas are located;
- where areas with archaeological potential found by chance are located.

Violations of the pre-emption right or of the preliminary procedure and requirements entail the absolute nullity of the transfer of ownership deeds for agricultural land outside buildable areas

Failure to observe the new legal procedures may also trigger fines of up to RON 100,000.

The law does not apply to the sale of land located inside buildable areas nor to a transfer of ownership performed between relatives of up to the third degree, inclusive.

Sales made on the basis of pre-agreements or option agreements authenticated prior to the law entering into force are to be finalised according to the initially agreed conditions.

**Important changes  
in legislation  
regarding sale of  
agricultural land  
located outside  
buildable areas**

## **ORDER 192 dated 20 February 2014 amending Order of Minister of Environment and Water Management No. 578/2006 approving methodology for calculating contributions and taxes payable to Environment Fund (Official Gazette 129/2014)**

We present the main changes brought by the current Order below:

### **Packaging waste/ used tires**

Conditions that must be met by economic operators generating packaging waste or placing new tires and/or used tires intended for reuse on the national market are detailed, so that targets for recovery or incineration in incineration plants in which energy is recovered may be taken into account.

Packaging waste generators and operators placing new tires and/or waste tires intended for reuse on the national market are required to register as contributors to the Environment Fund even if they have decided to transfer responsibility for their annual packaging waste/used tires management obligations to an economic operator authorized to take over this task.

### **Waste oils**

Starting in 2014, economic operators placing mineral-based oils, semi-synthetic oils, and synthetic oils, with or without additives, on the national market have been required pay a tax of 0.30 RON/kg to the Environmental Fund.

The tax is charged for the entire volume of oil introduced on to the market, or distributed starting 1 January 2014. Economic operators placing oil on the national market are required to declare and pay, on a monthly basis, no later than the 25th of the month following that in which the oil were placed on the market, the tax related to the volume of oil placed on the market.

For oil placed on the national market before 1 January 2014, the tax of 0.30 RON / kg is not due, and these operations are covered by 2013 legislation. The tax should be stated separately on sales invoices, throughout the supply chain through the end consumer.

Economic operators which purchase oil from other EU Member States or import them to mix with different additives or organic/inorganic substances, must pay the tax related to the product obtained at the time of its first distribution on the national market.

Economic operators which purchase oil from the national market to mix them with different additives or



organic/inorganic substances, must pay the tax related to the difference between the quantity of oil with additives distributed on the national market and the quantity of base oil purchased from the national market, at the time of the first distribution of the oil with additives on the national market.

**ORDER 225 dated 10 February 2014 to amend ANAF Presidential Order 5/2010 to approve the Procedure for processing VAT refund claims from taxable entities established outside the Community who are not registered under the scope of VAT in Romania (Official Gazette 149/2014)**

The procedure for processing VAT refund claims from taxable entities established outside the Community which are not registered under the scope of VAT in Romania was updated, being correlated with provisions of the Fiscal Code. The payment condition for invoices subject to VAT reimbursement was eliminated.

We remind you that the reimbursement form number is 313, and a fiscal representative is necessary. The form must be submitted within 9 months after the end of the year when VAT is exigible.

**LAW 22 dated 13 March 2014 to amend and complement Government Decision 26/2000 on associations and foundations (Official Gazette 188/2014)**

The Law changes Government Decision 26/2000 on associations and foundations, mostly the conditions regarding the name of these entities.

Thus, it is forbidden to have an identical or similar confusing name with another non-profit organization. A name is likely to be appropriate if it does not belong to another non-profit organization of the same kind – association, foundation or federation – and it was not previously registered within the National register for non-profit organizations.

The Law specifies phrases or words that are forbidden to be used for the name of an association or foundation.

**DECISION 119 dated 19 February 2014 to amend and complement Methodological norms for application of Law 76/2002 regarding the unemployment insurance system and stimulation of employment, approved by Government Decision 174/2002 and to amend Methodological norms for application of provisions of Law 116/2002 on preventing and combating social exclusion, approved by Government Decision 1149/2002 (Official Gazette 197/2014)**

The decision amends the Methodological norms for the application of Law 76/2002. We mention the most important amendments below:

- the change in forms and documents submitted to AJOFM (Unemployment Agency), such as: template of convention concluded between the employer and AJOFM in order to benefit from certain subsidies, declaration of vacant positions and career evolution for that occupation, classification of unemployed persons or of graduates of educational institutions for whom employers benefit from certain subsidies;
- The change in format of certificates issued by the employer regarding contribution period for a person who will benefit from an unemployment allowance;
- Upon termination of an employment relationship, the employers have the obligation to issue a certificate stating the amount of income paid as unemployment contributions for the persons for whom the work contract has ceased. Income must be mentioned for each of the previous 12 months of work. Refusal to issue this certificate is sanctioned with a fine of between RON 3,000 and 5,000.
- The system for unemployment insurance is also available to other categories of persons obtaining income from agricultural, rental or day labour activities. In order to benefit from the unemployment allowance, it is necessary to conclude a contract with the Unemployment Agency in the individual's jurisdiction and to pay, uninterruptedly for 12 months, the contribution to the unemployment fund. The contribution is 0.5% of declared income and the unemployment allowance is equal to the social reference indicator (currently RON 500);
- The system for unemployment insurance is also available for the spouse of the holder of an individual enterprise or of a self-employed person (PFA).

**LAW 18 dated 7 March 2014 to amend and complement Law 52/2011 regarding activities carried out occasionally by day labourers and also to amend art. 8 para. (1) of Law 416/2001 regarding guaranteed minimum wage (Official Gazette 192/2014)**

The Law amends the regulations applicable to day labourers. These amendments come into force 90 days after publication of the Law; therefore, on the 17th of June 2014.

We will present a broad presentation of these regulations in our next edition of the APEX Team Newsletter.

**ORDER 301 dated 24 February 2014 to amend Methodological norms to authorize exporters to issue proof of preferential origin according to agreements regulating preferential trade between the Community and partner countries, known as A.TR. certificates. A.TR certificates attest to the status of freedom of movement of a commodity within the EU and Turkey, and proof of preferential origin within the Free Trade Agreement between the EU and South Korea, by using a simplified procedure, approved by ANAF Vice-presidential Order 4822/2007 (Official Gazette 167.2014)**




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**News regarding  
calculation of  
environmental tax**

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**ORDER 380 dated 6 March 2014 to amend the ANAF Presidential Order 2289/2010 to approve Procedure regarding issuance and communication of certain administrative acts/documents for debtors which register unpaid tax liabilities under a certain limit (Official Gazette 184/2014)**

**ORDER 295 dated 25 February 2014 to amend and complement Order of the Minister of Public Finance 2595/2011 to approve Norms regarding modality to constitute, manage and use the risk fund of the Mihail Kogalniceanu Programme for Small and Medium Enterprises, as well as record keeping within the State Treasury (Official Gazette 172/2014)**

**ORDER 76 dated 20 February 2014 to amend and complement Classification of positions in Romania – the level of occupation (six characters), approved by Order of the Minister of Labour, Family and Social Protection and Order of the President of the National Statistics Institute 1832/856/2011 (Official Gazette 160.2014)**

Certain amendments are brought regarding the name of several occupations provided by the Classification of positions in Romania.

#### **REMINDER – Mandatory documentation of accounting policies**

We remind that as per provisions of Order 3055/2009 to approve Accounting Regulations in conformity with EU Directives, any entity to which this Order applies must prepare and update a handbook of accounting policies in use.

Accounting policies represent principles, bases, conventions, rules and specific practice used by the entity for preparation and presentation of annual financial statements.

Examples of accounting policies: depreciation method chosen for depreciating non-current assets, revaluation of tangible fixed assets or use of historical cost, valuation method of inventory releases, inventory tracking using a perpetual inventory system or periodic stock count, etc.

The Director must approve accounting policies for the transactions carried out, including own procedures for the circumstances set by law. For entities which do not have a Director, accounting policies are approved by the person to whom managing the entity lays.

Accounting policies must be drafted taking into account the specifics of the activity by financial and technical specialists who know the details of activity carried out as well as the strategy adopted by the entity. Changes in accounting policies are allowed only if required by law or its outcome is more relevant or provides more credible information on entity operations. In case of a change in accounting policy, the entity must mention the nature of changes in accounting policies in Disclosure Notes, if any, as well as the reasons for which application of new accounting policies provide more sincere and relevant information to enable the information used to assess whether the new accounting policy was adequately chosen, the effect of changes upon declared performance of the period as well as the trends in entity performance.

The following are not considered changes in accounting policy:

- adoption of accounting policies for events or transactions which differ from points of view on events or transactions which occurred previously;
- adoption of accounting policies for events or transactions which have not occurred in the past or were previously insignificant.

Order 3055/2009, also stipulates, "regarding accounting regulations, the following must be taken into account:

- existence of a handbook of accounting policies;
- existence of an implementation of procedures in this handbook;
- existence of controls to ensure respect of the handbook..... "

**Pay attention! The fine imposed by tax inspectors for non-compliance with the requirements regarding accounting policy documentation is up to RON 4,000.**

**APEX Team can assist you in preparing an accounting policy handbook in conformity with legal provisions.**

**DECISION 196 dated 19 March 2014 to approve the specific excise tax indicated in EUR equivalent for 1,000 cigarettes and to complement Methodological norms for application of Law 571/2003 regarding the Fiscal Code, approved by Government Decision 44/2004 (Official Gazette 208/2014)**

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

We remind that as per article 117 of the Fiscal Code, **dividends** paid by an enterprise which is a Romanian legal entity or a legal entity with its registered headquarters in Romania set as per European legislation to a legal entity resident in another EU Member State or to a permanent establishment belonging to an enterprise resident in another EU Member State, are exempted from withholding tax if the foreign legal entity/beneficiary of the dividends meets certain conditions and if it has been holding at least 10% of share capital of the Romanian legal entity for an uninterrupted period of at least 1 year as of the date dividends are paid.

As per provisions of article 118 of the Fiscal Code on "Corroborating provisions of the Fiscal Code to those of treaties to avoid double taxation and with European Union legislation", the non-resident must, at the time of collection, provide the income payer with its tax residence certificate issued by competent authorities of its State of residence as well as, if applicable, a **statement under own responsibility declar-**



**Fines up to  
RON 4,000 for non  
compliance with  
the requirements  
regarding the  
accounting policies  
documentation**





**ing that the condition of beneficiary in the context of applying EU legislation is met.** If the tax residence certificate and declaration stating the quality of beneficiary are not provided as of the payment date, provisions of Title V of the Fiscal Code apply, and subsequently, the income is taxed as per internal legislation.

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

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

- Declaration for exemption from taxation in Romania for payments of dividends made by a Romanian legal entity or by a legal entity with its registered headquarters in Romania set as per EU legislation to a legal entity resident in another EU State or to a permanent establishment of an enterprise of another EU State. The form may be downloaded from:

[http://static.anaf.ro/static/10/Anaf/formulare/a16\\_724.pdf](http://static.anaf.ro/static/10/Anaf/formulare/a16_724.pdf)

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

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

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

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

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

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

Forms 200 and 230 may be obtained at tax authority offices or downloaded from the ANAF website.

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

The deadline for submission of forms 200 and 230 is 25 May 2014.

### REMINDER – Deductibility of interest

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

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

### EASTER CELEBRATION

Gratuities can take several forms:

- Allowances of RON 150 for each under-age child of employees. This amount granted by the employer to its employees is granted under the caption, "social expenses", which are tax deductible up to 2% of annual payroll together with other categories of welfare expenses under the Fiscal Code. This amount is not subject to income tax for the employee when it is not granted in the form of a gift voucher when gift vouchers are subject to income tax. We mention that granting an amount which exceeds the ceiling of RON 150 or, in other circumstances, what is allowed by law, is considered a benefit in kind which is subject to income tax and is included in the calculation base for mandatory social contributions.
- Bonuses in addition to April gross salaries are subject to withholding of employee contributions and income tax. For the employer, bonuses and related employer contributions are tax allowed expenses;



You may  
allocate 2% of  
2013 income tax  
to a non profit  
organization



- ☑ “Easter presents”, other than those mentioned above are considered benefits in kind, the employee being subject to all individual contributions as well as income tax. For the employer, these presents are subject to employer contributions but are tax allowed expenses.

### IMPORTANT

Once annual financial statements for 2013 are finalized, all supporting accounting and fiscal documentation regarding 2013 is to be finalized:

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

### Conservation of documents and accounting registers

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

### REMINDER – Valuation of monetary items in foreign currency

The March closing NBR exchange rates to use for valuation of monetary items (cash on hand, receivables, payables) denominated in foreign currency, as well as receivables and payables denominated in RON but pegged to a foreign currency for collection/disbursement are:

1 EUR = 4.4553 RON; 1 CHF = 3.6525 RON; 1 GBP = 5.3753 RON; 1 USD = 3.2304 RON.

### APRIL 2014 – 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 71 of the Fiscal Code
- ☑ To revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month
- ☑ To organize a stock count of inventories if the enterprise does not use a perpetual inventory system
- ☑ To issue final invoices for the month of April 2014

#### 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 Monday 7 April is the last day to submit

- ☑ Form 092 (amendments) to change VAT return periods from Quarterly to Monthly in case an EU acquisition of goods occurred in March 2014. Starting April 2014, VAT returns shall be submitted monthly.



**Do you know the requirements for conservation of documents and accounting registers?**





### That Thursday 10 April is the last day to submit

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

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

- Hotel tax
- Advertising service tax

### That Tuesday 15 April is the last day to submit

- INTRASTAT statement for March 2014 (standard or extended, submitted on-line)

### That Monday 21 April is a day off (Easter Monday)

### That Tuesday 22 April is the last day to submit

- the special VAT return for the previous quarter (VOES system) by the taxable entities not established in Romania that provide electronic services to non taxable entities

### That Friday 25 April is the last day to submit

- State budget liability return (form 100)\*
- Return regarding social contributions, income tax and nominative list of insured persons (form 112)\*
- VAT return (form 300)\*
- Special VAT return for VAT non payers (form 301)\*
- Recapitulative statement of EU supply/acquisition/services (form 390)\* for March 2014
- Informative Statement on domestic supply/services rendered and acquisitions regarding March 2014 (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" included)
- 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)
- Statement of allocation between associates of income and expenses pertaining to Quarter I 2014 (form 104 to be submitted by associations which are not legal entities and formed between taxpayers as set at article 13 letters c) and e) of the Fiscal Code)
- The reimbursement request for excise duties by importers for the previous quarter
- The reimbursement request for excise duties for distance sales for the previous quarter

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

- Excise taxes
- VAT
- Liabilities to the sole account – **State Budget**
  - o Tax on crude oil and natural gas from domestic production
  - o Withholding tax on non-resident income
  - o **Tax on profit pertaining to Quarter I 2014**
  - o **Tax on the micro enterprise revenues pertaining to Quarter I 2014**
  - 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 March 2014
  - o Tax on interest income
  - o Tax on investment income
  - o Tax on pension income
  - o Tax on income from prizes and gambling
  - o Tax on income from other sources
  - o Contribution for non-employment of disabled persons for employers with headcount over 50
- Liabilities to the sole account – **Public Insurance Budget and special funds**
  - o Social security contribution (pension)
  - o Health insurance contribution
  - o Medical leave contribution and health insurance allowance
  - o Unemployment contribution
  - o Contribution to fund to guarantee payment of salary liabilities
  - o Contribution to work accident and occupational disease fund
- Contribution to Environment Fund ("ecotax" included)

### That Wednesday 30 April is the day to submit

- Statement of excise duties for 2013 (form 120) \*
- Tax return on crude oil from domestic production (Form 130) \*
- Annual financial statements for public institutions, associations and other non-profit organizations**




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**25 April  
deadline for  
payment of  
profit tax and  
micro-enterprise  
tax for quarter I  
2014**

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**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](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.

**KEY HR FIGURES**

2014 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 2,298 = RON 11,490) <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 850) for every 100 employees	
Minimum monthly gross salary as per Government Decision 871/2013	RON 850	
Luncheon voucher - employee subject to salary starting May 2013	RON 9.35	
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: The contribution to 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 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.

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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