

# Newsletter

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## **ORDER 611 dated 31 January 2019 to approve template, content and modalities to submit and manage Return on social contributions, income tax and nominative list of insured persons (Official Gazette 123/2019)**

The Order updates revised Form 112 on social contributions, income tax and nominative list of insured persons. The form is completed and submitted by employers. The main novelty in 2019 is represented by the recent fiscal facilities introduced for employees in the field of construction.

As we mentioned in previous issues of our newsletter, legislative amendments in the field of construction raise a lot of questions regarding practical application. Many economic operators faced various problems regarding eligibility criteria for the new facilities. We expected to receive answers to these questions and to have the existing issues resolved through amendments to provisions of the Fiscal Code. Instead, the authorities seek to clarify some of the issues mentioned above by issuing the current Order for tax form 112 with accompanying instructions. Even though this type of regulation is not customary, at least we are glad to receive certain answers required by employers in the field of construction.

The most important aspect that the Order clarifies refers to the modality to calculate turnover subject to the minimum threshold test of whether 80% of income is from construction activity, a condition required in order to apply the fiscal facilities.

Thus, the term *turnover* used to grant facilities to employees in the field of construction is different from the accounting term *turnover* reported in financial statements and other accounting reports, also known as Group of Accounts 70 in the trial balance. Total year-to-date turnover, including the reporting month, for the purpose of determining eligibility for facilities granted in the field of construction will be calculated as:

- accounting turnover accumulated from beginning of the year** – defined as total revenue earned from the beginning of the year through the end of the reporting month, obtained from the sale of products and provision of services, subsequent to deduction of commercial discounts, VAT and other taxes directly related to turnover according to Order of the Minister of Public Finance (OMPF) 1802/2014 or OMPF 2844/2016;
- plus**, amounts accumulated from the beginning of the year through the end of the reporting month, representing:
  - o **income obtained from operating subsidies** related to net turnover recorded in accounting records during each reporting month;
  - o **income obtained from production of tangible assets and real estate investments (group 722)** documented in the accounting records during each reporting month.
- plus** monthly credit balances **or minus** monthly debit balances, accumulated from the beginning of the year through the end of the reporting month, related to **stored or ongoing production – Work-in-Progress - (711/712 revenue groups)**, i.e. monthly creditor/(debtor) balances of revenue related to inventory costs of products and ongoing services prior to transfer into profit and loss account, recorded in accounting records at end of months when creditor/debtor balance are recorded.

To summarize, in addition to accounting turnover, income from operating subsidies, production of assets (accounts 722) and variation of stored production (WIP)

(accounts 711/712) are included when determining eligibility for fiscal benefits for employees in the construction sector.

If an employer carries out activities corresponding to NACE codes referred to in art. 60 point 5 of the Fiscal Code at secondary establishments, turnover taken into consideration in determining fulfilment of the conditions will be based on activity at all establishments.



**ORDER 167 dated 30 January 2019 to amend and complement ANAF Presidential Order 2856/2017 to set fiscal risk criteria for the purpose of registration or cancellation of registration under the scope of VAT, to approve Procedure to evaluate fiscal risk for taxable entities applying for registration under the scope of VAT according to art. 316 para. (1) letter a) and c) and para. (12) letter e) of Law 227/2015 of the Fiscal Code, Procedure to register, upon request, under the scope of VAT according to art. 316 para. (12) letter e) of Law 227/2015 of the Fiscal Code, as well as to approve Procedure to cancel registration under the scope of VAT by default for taxable entities with a high level of fiscal risk according to art. 316 para. (11) letter h) of Law 227/2015 on the Fiscal Code (Official Gazette 80/2019).**

This law aims to optimize the Procedure to register under the scope of VAT for taxpayers electing to apply the regular VAT regime when turnover is below the exemption threshold (RON 300,000/year).

Registration under the scope of VAT may be obtained on the day when documents are submitted. In this regard, the taxpayer should electronically transmit a statement under own responsibility/*affidavit*, using the template adopted by the current Order. This statement should be submitted by directors and shareholders holding more than 25% of share capital.

For same-day registration under the scope of VAT, form 010 shall be presented along with proof that statement under own responsibility was submitted.

The taxpayers mentioned above will not be classified as representing a high level of fiscal risk.

Subsequently, within 15 days from submission, information on the statement under own responsibility will be verified by ANAF.

If information from the statement does not correspond to information available in ANAF databases, the file will be forwarded to the Anti-fraud General Directorate for additional analysis. If inconsistencies are confirmed, the registration under the scope of VAT will be cancelled.

**APEX observations:** Both registration procedures are valid: the previous method has not been repealed. On the other hand, criteria to determine the level of fiscal risk remain unchanged. In fact, the statement under own responsibility contains validation of selected risk criteria taken from legislation. Certain criteria are not specifically mentioned in the statement. Confirmation that all risk criteria are met prior to submission of VAT registration documents is strongly recommended. One of those refers to the size of share capital, correlated to director's status as non-resident individual and not registered in Romania. For example, when a director is a non-resident individual and not registered in Romania, share capital should be above RON 45,000. Please note that although this is not specifically mentioned in the statement under own responsibility, be sure this criterion is met, in order to avoid the cancellation of the VAT code at a later date.

**ORDER 426 dated 20 February 2019 to amend and complement ANAF Presidential Order 587/2016 to approve template and content of forms used to declare taxes and contributions under self-assessment or withholding regime (Official Gazette 140/2019)**

The order amends the list of budgetary obligations declared on form 100 – State budget liability return.

Thus, the following fiscal liabilities are deleted:

- Contribution to finance certain health expenses from activities related to advertising tobacco products and alcoholic beverages;
- Contribution to finance certain health expenses for domestically produced tobacco

**A new simplified registration procedure by option for VAT purposes is in place**



products.

The following fiscal obligations are introduced:

- Monthly tax calculated from participation taxes collected within a month, owed by those organising online gambling activities provided by GEO 77/2009 on organisation and operation of gambling activities.

Submission date: by the 25<sup>th</sup> of the month following the month for which the tax is due.

- Tax on financial assets**

Submission date:

- o by the 25<sup>th</sup> of the month subsequent to the quarter for which the tax is due;
- o by the date of submission of financial statements with the competent fiscal authority or by the date of de-registration, depending on the case, for taxpayers whose underlying legal entity is dissolved during a quarter.

### **ORDER 452 dated 25 February 2019 to complement Annex to ANAF Presidential Order 1612/2018 to approve List of fiscal liabilities paid into sole account (Official Gazette 156/2019)**

The Order complements the List of fiscal liabilities paid into sole account, adding the following:

- a tax on financial assets;
- social insurance contribution owed by individuals in the construction field obtaining income from salaries.

### **ORDER 114 dated 21 January 2019 to approve Procedure to register lease agreements, as well as template and content of Application to register lease agreements (Official Gazette 109/2019)**

The Order approves Procedure to register lease agreements, as well as template and instructions to complete Application to register lease agreements.

According to art. 1798 of the Civil Code, lease contracts concluded under private signature and already registered with fiscal authorities, as well as those concluded in notarised form, represent enforceable entitlement to payment of rent according to deadlines and modalities set in the agreement in terms established by contract or, in the absence of a contract, by law.

Lease agreements (rent, rent of agricultural land, commercial leasing) concluded under private signature by individuals or legal entities may be registered with central fiscal authorities subordinated to ANAF.

The central fiscal authority is:

- central fiscal authority where the lessee is registered as taxpayer;
- central fiscal authority where the lessee, resident individual, has fiscal domicile, according to the law;
- central fiscal authority administering the area where the item subject of the lease agreement is located, for non-resident individuals.

To register a lease contract, the lessee submits an Application to register lease agreement form along with a copy of the lease agreement with in conformity with the original written on the copy.

The application, with the copy of the lease agreement, is directly submitted to the register office of the central fiscal authority or through electronic means.

Amendments or discontinuance of the lease agreement may be registered at the central fiscal authority by submitting the application with the CHANGE or CEASE box selected, depending on the case, along with all supporting documents.

### **DECISION 92 dated 19 February 2019 to approve Criteria and Procedure to authorize intermediary agencies demand and supply of daily labour (Official Gazette 151/2019)**

The Decision approves Procedure to authorize agencies acting as intermediaries on behalf of day labourers.

We recall that the activities for which day labourers may be used were dramatically reduced as provided by GEO 114/2018. Thus, starting 2019, day labourers may be only used in agriculture, forestry and fish breeding. This was already mentioned in APEX



### **New regulations on the registration of lease agreements**



Team Newsletter no. 12/2018.

Authorization of economic operators is performed by the National Agency for Employment (ANOFM).

Entities having the obligation to obtain authorization according to the current decision are the following:

- a) companies established in Romania according to Law on companies 31/1990, having object of activity of Activities of employment placement agencies, NACE code 7810;
- b) companies settled in other European Union or European Economic Area Member states, according to law in the origin state and permanently established in Romania for the purpose of finding work for day labourers. No authorization is required for acting as intermediaries in Romania.

Minimum conditions to obtain authorization are:

- object of activity is NACE code 7810;
- the applicant has the material base to perform the services;
- at least 25% of the staff have higher education degrees in one of the following courses of study: psychology, pedagogy, or at least 2 years law school in the field of labour.

### **ORDER 451 dated 25 February 2019 to complement ANAF Presidential Order 1281/2018 to approve Methodology to distribute amounts representing employment insurance contributions paid by taxpayers to the distinct account and subsequent settlement (Official Gazette 156/2019)**

The Order regulates the manner to distribute employment insurance contribution owed by employers carrying out activities in the field of construction and meet the conditions provided by art. 60 point 5 of the Fiscal Code.

The contribution is collected in the account for revenue to State Budget 20.A.47.06.00, Amounts from employment insurance contribution owed by employers in the construction field to be distributed, opened at the State Treasury units and is integrally distributed to the Fund to Guarantee payment of salary liabilities, account 28.A.20.11.00, Revenue from employment insurance contribution for the Fund to Guarantee payment of salary liabilities.

### **ORDER 169 dated 30 January 2019 to approve Procedure to update fiscal status (vector fiscal), for taxable entities registered under the scope of VAT using the calendar quarter as fiscal period and performing an intra-community purchase of goods which are taxable in Romania, as well as template and content of certain forms (Official Gazette 154/2019)**

The Order approves Procedure to update fiscal status (vector fiscal), for taxable entities registered under the scope of VAT, using the calendar quarter as its fiscal period and performing an intra-community purchase of goods which is taxable in Romania. The related forms are also approved.

We recall that taxable entities having turnover of less than EUR 100,000 which have no intra-community purchases of goods, should use the quarter as its fiscal period in relation to VAT.

If an intra-community purchase of goods occurs, the taxable entity has the obligation to update its fiscal status and will have the calendar month as fiscal period related to VAT. The fiscal status should be updated within 5 business days from the end of the month when VAT chargeability related to the intra-community purchase appeared. Thus, the company will have the month as its fiscal period, both for the current year and the next, even if it does not perform any other intra-community purchases of goods.

The change in fiscal status is only mandatory for intra-community purchases of goods which are taxable in Romania. The fiscal status will not be changed for intra-community purchase of services.

The Procedure to update fiscal status consists of submitting form 092 to ANAF. This form may also be submitted through electronic means.

Failure to comply with the obligation to update the fiscal period gives ANAF the right to proceed to ex officio update of fiscal status, according to Procedure approved by the current Order. The taxpayer has the right to submit an appeal within 45 days from commu-



**VAT tax period  
can be changed  
ex-officio  
by ANAF**





nication of the decision on change in fiscal status.

### **DECISION 51 dated 30 January 2019 to approve Methodological Norms to apply Law 217/2016 on reduction of food waste (Official Gazette 101/2019)**

The Decision approves Methodological Norms to apply Law 217/2016 on reduction of food waste.

### **DECISION 34 dated 30 January 2019 to set quota for newly-admitted workers in the labour market in 2019 (Official Gazette 80/2019)**

For 2019, in Romania, the quota for newly-admitted workers (work permits) on the labour market is set at 20,000.

### **REMINDER - Do not forget to request tax residence certificates issued in 2019 from your foreign business partners**

Tax residence certificates issued in 2018 are valid for the first 60 days of 2019.

### **INFO - Valuation of monetary items in foreign currency**

The February 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 = 4.7416 RON; 1 CHF = 4.1800 RON; 1 GBP = 5.5302 RON; 1 USD = 4.1584 RON.

### **MONTHLY 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 8 of the Fiscal Code
- To revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month
- To organise a stock count of inventories if the enterprise does not use a perpetual inventory system
- To issue final invoices for the current month.

#### **TO COMPLY WITH REQUIREMENTS REGARDING VAT**

- Mention the registration code under the scope of VAT on documents for EU business partners
- Check validity of registration code under the scope of VAT mentioned on invoices received
- Check 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 ledger of goods received
- Maintain ledger of non-transfer of goods
- Maintain non-current assets ledger
- Mention which exchange rate will prevail (NBR, commercial bank or Central European Bank) in contracts with foreign partners

#### **TO CONSULT THE CALENDAR OF TAX LIABILITIES, VISIT THE FOLLOWING LINK ON ANAF WEBPAGE (IN ROMANIAN):**

[https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili\\_r/Calendar/Calendar\\_obligatii\\_fiscale\\_2019.htm](https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Calendar/Calendar_obligatii_fiscale_2019.htm)




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**25 March -  
deadline for  
submission of the  
declaration and  
payment of profit  
tax for 2018**

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### KEY HR FIGURES

2019 Contributions for dependent activities	Employer and beneficiary (for activities considered dependent) (% share)	Employee and dependent worker (% share)
Social security contribution (pension)	<ul style="list-style-type: none"> <li>• It is not due to normal working conditions</li> <li>• 4% for special work conditions</li> <li>• 8% for special work conditions</li> </ul>	25% (**)
Contribution to health insurance fund (calculated on gross income)	It's not due	10% (***)
Work insurance contribution	2.25% (*)	
Income tax		10% (****)
Disability Fund (for employers with more than 50 employees)	4 x minimum wage for every 100 employees	
The amount of a taxable meal tax in the sense of income tax	max 15,18 lei	
Minimum wage (gross) <b>from 1 January 2019</b>	<ul style="list-style-type: none"> <li>• 2,080 lei</li> <li>• 2,350 lei (for more than 1 year and functions requiring higher education)</li> <li>• 3,000 lei for employees on construction field</li> </ul>	
Diurnal (in the country) For employees of public institutions For private sector employees (* 2.5)	<ul style="list-style-type: none"> <li>• 20 lei</li> <li>• 50 lei</li> </ul>	
<p>The below tax facilities are available for employers on the field of construction, when minimum 80% of turnover is from construction activities defined by law:</p> <p>(*) not due by employer</p> <p>(**) the social security owed by the employee is decreased to 21,25%</p> <p>(***) health insurance is not due by the employee</p> <p>(****) tax on income is not due for gross salaries between 3.000 lei and 30.000 lei.</p>		

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- Consulting and assistance in drafting transfer price files
- Start up services
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- Assistance in implementation of ERP
- Training