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ORDER 1444 dated 31 July 2009 to set the indexed face value of a luncheon ticket for the second half of 2009 (Official Gazette 547/2009)

For the second half of 2009, starting September, the value of a luncheon voucher is **RON 8.72**.

ORDER 2321 dated 16 July 2009 to approve Implementation Norms of procedure to postpone payment of fiscal liabilities administered by ANAF which were not settled by due date (Official Gazette 508/2009)

This Order approves Implementation Norms of Emergency Government Ordinance 92 dated 30 June 2009 (presented in APEX Team newsletter No. 7/2009) regarding the procedure to postpone payment of fiscal liabilities administered by ANAF which were not settled by the due date. Postponement is granted for fiscal liabilities administered by ANAF and not settled by their due date as a consequence of the economic and financial crisis as well as related penalties for late payment.

Postponement is requested by the taxpayer through submission of an application with the tax authorities. Deferred payment is granted once a calendar year. The duration for which postponement is applied cannot exceed 6 months or 20 December of the current fiscal year when postponement is accepted, whichever is earlier. Postponement is granted for a number of months which starts from the date of issue of the decision to grant postponement.

In case the taxpayer has secondary establishments where tax on salary is withheld from employees, the application for postponement is submitted to the tax authority in charge of the taxpayer for each office of the organisation which represents a secondary establishment.

The application for deferred payment must include the following:

- Identification data of the taxpayer: denomination/ name, name of legal representative or authorized representative, fiscal domicile, tax registration code, phone/fax number, e-mail address as well as names of the persons who represent the taxpayer in its relation with third parties;
- Requested period for postponement expressed in number of months;
- Total amount for which deferred payment is applied for, split by type of tax and contribution and other debts towards the State consolidated budget and related penalties for late payment. In case the taxpayer has secondary establishments where tax on salary is collected, the latter is split by secondary establishment.

Taxpayers who do not have their fiscal domicile in Romania and have unsettled fiscal liabilities as of the due date can benefit from deferred payment only if a representative is appointed as per article 18 of the Code of the fiscal procedure.

One condition for the taxpayer to qualify for deferred payment is to have no tax arrears as at 30 September 2008. In the Norms, conditions are presented as well as further clarification such as: In case a taxpayer had tax arrears as at 30 September but had submitted prior to this date an application for VAT refund or an application for restitution which is in progress at the date of application for deferred payment, the condition is met if:

- the amount of arrears of tax liabilities is less than or equal to the amount to be refunded;
- provisions regarding date of settlement in case of contra as per article 122 point 1 of the fiscal Code procedure are met.

Differences which result from processing a VAT refund and/or application for restitution are deemed tax liabilities from the date of communication of the outcome of the process as per provisions of article 111 point 2 of the Code of fiscal procedure.

Implementation Norms also disclose the methodology for analysis and approval of the application for postponement of tax liabilities.

ORDER 1454 dated 5 August 2009 to amend and complement Procedures regarding the employer's monthly statement which includes a list of insured persons and contributions due to the Unemployment Fund approved by Order 405/2004 of the Ministry of Labour, Social Solidarity and Family (Official Gazette 579/2009)

This Order amends the monthly statement regarding the list of insured persons and contributions to the Unemployment Fund by introducing new captions to disclose the number of hours and days for which exemption from contributions was granted as well as the minimum monthly gross salary in force at the time of suspension used for computing compensation for technical unemployment in the conditions of Emergency Government Ordinance 28/2009 to establish

social protection measures.

The provisions of this Order apply starting with the August 2009 unemployment statement.

Employers who benefitted from provisions of OUG 28/2009 must submit adjusted statements to disclose the hours of suspension of activity for which contributions had not been paid within 2 months starting the date of publication of the present Order in the Official Gazette (i.e. 19 October 2009 at the latest). Breaching this obligation further to a written request from the Employment Agency is sanctioned as per provisions of Law 76/2002 regarding the unemployment insurance regime and enhancing employment.

Furthermore, the Order introduces an obligation to submit the monthly statement with the Bucharest Employment agency by non resident taxpayers, legal or natural persons who have no headquarters/domicile in Romania but have employees legally registered for social insurance in Romania.

ORDER 1340 dated 16 July 2009 to approve the model and content of form 710 "Adjusted return," code 14.13.01.00/r (Official Gazette 508/2009)

This Order approves an updated template for form 710 "Adjusted return."

We recall that the adjusted return is used to correct taxes and contributions administrated by ANAF and self assessed by the taxpayers or under the withholding tax regime declared in forms 100 "State consolidated budget liability return," 102 "Social insurance and special funds liability return" and 103 "Excise tax return."

We emphasize that the amounts to disclose in the "Adjusted return" are not adjustments to taxes and contributions determined during a tax inspection.

The Adjusted return is filed using guidance for its preparation that may be downloaded from the Ministry of Economy and Finance website and can be submitted by remote means of electronic transmission by taxpayers which have opted to file their returns on-line and which hold a digital certificate.

INSTRUCTION 27 dated 3 August 2009 regarding the National Bank of Romania (NBR) reference interest rate for August 2009 (Official Gazette 537/2009)

For the month of August 2009, the NBR reference interest rate is 9% per annum.

REGULATION 8 dated 23 July 2009 to amend and complement REGULATION NBR 4/2005 regarding foreign exchange transactions (Official Gazette 526/2009)

ORDER 2169 dated 26 June 2009 to amend and complement Implementation regulations for maintaining and managing accountancy for public institutions, the chart of accounts for public institutions and instructions for its use, approved by OMFP 1917/2005 (Official Gazette 513/2009)

ORDER 1432 dated 15 July 2009 to set the indexed monthly amount which is granted as nursery vouchers for the second half of 2009 (MO 503/2009)

For the second half of 2009, starting with August, the indexed monthly amount granted as nursery vouchers is RON 360.

REMINDER – Paid vacation

Every company must plan for next year's paid vacation by 31 December. Paid vacation planning is requested at the time of an inspection of the Territorial Labour Inspectorate (ITM).

Paid vacation is taken during the calendar year when the rights for paid vacation have been acquired. By exception, taking vacation during the following calendar year is allowed only in circumstances set by law or by the applicable collective labour contract. For employees who did not take all the days off they were entitled to during the year, the employer must grant the remaining number of days off before the end of the following year. It is forbidden to compensate days off which were not taken, except when the employee leaves the enterprise. In such a case, compensation for vacation is paid to the employee. Conversely, at labour contract termination, when days off taken exceeds the number of days the employee was entitled to, the value of the excess vacation days used are deducted from the last salary.

INFORMATION – transfer of fiscal files subject to administration by the "Inspectorate for large taxpayers" or "Inspectorate for medium sized taxpayers"

Transfer of fiscal files administration to the Inspectorate for large taxpayers or the Inspectorate for medium sized taxpayers triggers the following in terms of declaration and payment of fiscal obligations:

- Tax returns regarding the headquarters will be submitted to the "Judet" Inspectorate or the Bucharest Inspectorate in charge of the administration of large taxpayers or medium sized taxpayers. As a result, the returns are no longer submitted to tax authorities of the Bucharest district or to tax authorities located in the "Judet."
- Tax on salary withheld from employees (over 5) of secondary establishments must be declared by submitting a form 100 "State consolidated budget liability return." The return must be submitted to the "Judet" Inspectorate or the Bucharest Inspectorate in charge of administration of large taxpayers or medium sized taxpayers where the secondary establishment is located.
- Payment of taxes and contributions is made to the Treasury of Bucharest or that of the "Judet" but not to the Treasury of a Bucharest district or the Treasury of tax authorities located in the "Judet." This provision also applies to secondary establishments located throughout the country.

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H.R. KEY FIGURES

2009 Contribution	Employer (%)	Employee (%)
Social security contribution	20.8% for normal working conditions 25.8% for particular working conditions 30.8% for special working conditions	10.5%
Medical leave contribution and health insurance allowance	0.85%	
Work accident and occupational disease fund	0.15% - 0.85% depending on CAEN code for main activity	
Unemployment fund	0.5%	0.5%
Contribution to fund to guarantee payment of salary liabilities	0.25%	
Health insurance fund	5.2%	5.5%
Labour office commission	0.25% or 0.75%	
Salary tax		16%
Contributions for non employment of disabled persons (for employers with more than 50 employees)	4 x 50% minimum gross salary (RON 600) for every 100 employees	
Minimum monthly gross salary	RON 600 for unqualified positions RON 720 for positions requiring High School RON 1,200 for positions requiring a University degree	
Luncheon voucher	RON 8.72 starting September 2009	
Average monthly gross salary (INSSE June 2009)	1,887 RON	
Per diem (in Romania)		
Employees in the public sector	13.00 RON	
Employees in the private sector (*2.5)	32.50 RON	

COMPANY CAR – In-kind benefit for employees and tax base

If an employee is provided with a car, an in-kind benefit ought to be declared when the vehicle is used for private purposes irrespective of whether it belongs to the company or is leased under an operating or financial lease contract. The in-kind benefit is taxable to the employee depending on private usage and on status of the car in the company books:

- For cars which belong to the company or are the object of a financial lease, the in-kind benefit is determined monthly as follows: 1.7% multiplied by the vehicle cost at initial recognition multiplied by the number of kilometres driven for private purposes divided by total kilometres during the month.
- For cars which are the object of a rental or operating lease contract, the in-kind benefit is determined monthly as follows: rental expense multiplied by number of kilometres driven for private purposes divided by total kilometres driven during the month.

In both cases, it is mandatory to maintain a car log.

The amount of the in-kind benefit must be added to the employee's gross salary and is subject to both employer and employee tax contributions as well as income tax. The gross amount of the benefit in kind is further deducted to determine the employee's net salary.

In cases where the person who uses the car for private purposes is a foreign company employee in secondment in Romania, the in-kind benefit must be added to the amount the seconded declares in his/her form 224 monthly and subsequently pays monthly income tax in Romania.

Some tax inspectors consider that the company ought to collect VAT upon the in-kind benefit granted to the employee (final consumer) and furthermore that the procedure of self invoicing must be applied.

Insuring passengers of automobiles used for both professional and private purposes must not be ignored.

As for fiscal issues, Government Decision (HG) 1860/2006 with its further amendments on rights and duties of personnel of public authorities and institution personnel on professional travel out of town or in town cannot be disregarded. Although these provisions are only applied to the public sector, (the private sector having a single limitation mentioned in the Fiscal Code of per diem capped at the public sector per diem x 2.5), in

practice, tax inspectors could use the limits stated in HG 1860/2006 (for instance petrol vouchers for only petrol up to a limit of 7.5 litres/100km) as a measurement unit for deductibility.

Furthermore, starting 1st May 2009 when Government Emergency Ordinance (OUG) 34/2009 enters in force, more restrictive provisions apply regarding deductibility of petrol expenses and related VAT. In order to be in a position to deduct the expense and to recover the related VAT, besides conditions of form (petrol voucher stamped and car registration number noted), the vehicle must be used exclusively for the categories of activities expressly stated in the ordinance as outside its scope of application. The exclusive use results from: the object of activity of the taxpayer, the fact that its employees have the required qualifications in the field of activity stated as exceptions, the car logs which document that only qualified staff uses the vehicle and any additional proof which can be provided.

In cases where an employee uses his/her private car for professional purposes, a commodatum (*free use*) agreement must be signed between the car owner/employee and the company. Restrictions set by OUG 34/2009 regarding deductibility of expenses and related VAT apply as they apply to vehicles which belong to the company or which is the object of a financial or operational lease.

Actually, some dispositions seem rather contradictory regarding company cars. On one hand, private use of a company car means an obligation to declare an in-kind benefit for the employee liable to contributions and income tax as well as contributions to be supported by the employer. On the other hand, as per OUG 34/2009, to be in a position to deduct petrol expense and to recover the related VAT, the vehicle must be used *exclusively* for the categories of purposes mentioned in the law. Even if private use triggers an income tax withheld from the employee, it could be considered as a breach in the exclusive use rule which would mean that the right to deduct petrol expenses and related VAT would then be denied for any other use of the car. Even if provisions of law are subject to interpretation, there is still some risk of exposure. In case of a tax inspection, the inspectors may consider that petrol expenses are not tax deductible and related VAT cannot be recovered for cases of a company car used for both professional and private purposes irrespective of the status of the car (owned, leased, used).

SEPTEMBER 2009 – AGENDA**Every day - do not forget:**

- To complete the petty cash register (or print electronic version)
- To complete the purchase ledger and sales ledger

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
- To organise a stock count of inventories if the enterprise does not use a perpetual inventory system
- To issue final invoices for the month of September 2009 (but be aware that the deadline of the 15th of the following month applies).

To comply with new 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 Tuesday 1st September is the last day to pay:**

- Tax on agricultural revenue – on a normative basis (Instalment I)

That Monday 7 September last day to submit

- Form 092 (amendments) to change VAT return periods from Quarterly to Monthly for EU acquisitions in August 2009. Starting September, the VAT return will be submitted monthly. The period July-August will represent a distinct fiscal period for which a VAT return will be submitted, and is due by 25 September 2009.

That Thursday 10 September is the last day to submit

- Return on collection of hotel tax

That Thursday 10 September is the last day to pay

- Hotel tax
- Advertising service tax

That Tuesday 15 September is the last day to submit

- INTRASTAT statement for August 2009

That Tuesday 15 September is the last day to pay:

- Income tax on income from independent activities (Instalment III)
- Income tax on rentals, except rentals of agricultural land (Instalment III)
- Tax on agricultural revenue – on an effective basis (Instalment III)
- Tax on advertising billboards (instalment III)

That Friday 25 September is the last day to submit

- State consolidated budget liability return (form 100)*
- Social insurance and special funds liability return (form 102)*
- Excise tax return (form 103)*
- VAT return (form 300)*
- Social security statement with list of insured persons

- Social security statement regarding liabilities to the National Fund for health insurance, medical leave and compensation from health insurance
- List of insured employees and health contribution to social health insurance fund
- Unemployment fund statement with list of insured persons
- Tax return for commission due by employers to the Labour Inspectorate (ITM)
- Statement of 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)
- Special VAT return for VAT non payers (form 301)*
- Environment Fund Statement.

That Friday 25 August is the last day to pay:

- Excise taxes
- Tax on crude oil and natural gas from domestic production
- Withholding tax on non-resident income
- VAT
- Salary tax
- Tax on income from independent activities, withheld at source
- 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
- Social security contribution
- Health insurance contribution
- Medical leave contribution and health insurance allowance
- Unemployment contribution
- Contribution to fund to guarantee payment of salary liabilities
- Commission to ITM for holding and updating Labour books
- Contribution to work accident and occupational disease fund
- Contribution for non employment of disabled persons for employers with headcount over 50
- Contribution to the Environment Fund
- Gambling tax.

That Wednesday 30 September is the last day to pay:

- Local taxes on land, construction and means of transport (Instalment II and final for 2009).

All forms mentioned above as well as guidance on their preparation may be downloaded from the Ministry of Economy and Finance website: www.mfinante.ro.

The tax returns noted with an asterisk (*) can be submitted by remote means of electronic transmission by taxpayers which have opted to file their returns on-line and which hold a digital certificate.



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- Assistance in implementation of ERP**
- Training**



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