

56 Boulevard Dacia,
District 2, Bucharest
Tel: +40 (0) 31-809 2739
Fax: +40 (0) 31-805 7739
Email: office@apex-team.ro

Contents:

- The micro enterprise tax regime is over: all companies are subject to tax on profit
- Any new labour contract is registered before work inception and termination on the same day
- Implementation Norms of the Fiscal Code in force as at 1st January 2010
- Quarterly instalments of tax on profit equal to 25% of prior year's annual tax
- Implementation of changes in the field of VAT occurred as at 1st January 2010
- Refund procedure for VAT from an EU member State to a person established in Romania
- Refund procedure for Romanian VAT to a person established in an EU member State
- Refund procedure for Romanian VAT to a person established in a non-EU country
- Registration under the scope of VAT
- Application for half year or year as tax period
- Suspension of tax inspection
- Payroll contribution rates do not change in 2010
- NBR interest rate for January 2010
- Which exchange rate to use?
- Inflation rate
- **Monthly** recapitulative statement of EU supplies/acquisitions/**services**
- Valuation of monetary items in foreign currency as at 31.01.2010
- Key HR figures
- February 2010 AGENDA

ORDER 101 dated 28 January 2010 to amend ex officio the fiscal regime of taxpayers registered as at 31.12.2009 as liable for tax on micro enterprise revenue (Official Gazette 65/2010)

Any entity which is liable for tax on micro enterprise income through 31 December 2009 is automatically liable for tax on profit. This change in tax regime is performed by tax authorities and therefore submission of form 010 is not necessary. Another significant change for this type of entity: payroll contributions must be declared and paid monthly, not quarterly as previously required.

VERY IMPORTANT – REGISTRATION OF LABOUR CONTRACTS

Starting 20 January 2010, by Government Decision 37/2010, deadlines regarding registration of labour contracts into the employees' electronic general register changed.

Thus, **a new hire must be registered in the employee's register the day before the employee starts working, at the latest.** Furthermore, the date and reason for labour contract termination must be **"registered in the employee's register on the date the labour contract ceases."**

DECISION 37 to amend and complement Government Decision 161/2006 regarding maintenance and update of Employees' General Register (Official Gazette 45/2010)

As per provisions of this Decision, information related to employment of a new employee must be recorded in the Employees' Electronic Register and transmitted to the Labour Inspectorate ("ITM") at least one working day before the employee starts working.

Information regarding termination of a labour contract must be recorded in the Employees' Electronic Register and transmitted to the ITM on the day the labour contract ceases.

Breach of these provisions is punished with a fine of RON 1,500 for each labour contract; however, the cumulative fine cannot exceed RON 20,000. Updating the Employees' Electronic Register with inaccurate data is punished with a fine of between RON 3,500 and RON 5,000. Fines enter in force on 30 January 2010.

Deadlines for registration of labour contracts, addenda to labour contracts and resolutions for labour contract termination in paper format remain unchanged as follows:

- for labour contracts, 20 calendar days starting the day of inception of work as mentioned in the labour contract;
- for addenda to the labour contract and resolutions for labour contract termination, 5 calendar days starting the date of amendment/termination.

DECISION 1620 dated 29 December 2009 to amend and complement Implementation Norms of Law 571/2003-Fiscal Code approved by HG 44/2004 (Official Gazette 927/2009)

As mentioned in the last APEX Team newsletter, a summary of changes introduced as of 1st January 2010 by Implementation Norms of the Fiscal Code is presented below, grouped by subject:

Tax on profit

As per article 34 letters a) and b) of Law 571/2003 - Fiscal Code, starting 2010, all taxpayers (except those which pay tax on profit annually) will pay tax on profit in quarterly instalments, which previously only applied to banks.

The taxpayer must declare and pay a quarterly instalment of tax on profit equal to 25% of tax on profit due the previous year, indexed by an inflation rate (December vs. December of the previous year) by the 25th of the month following the quarter.

Assessment of amount of quarterly profit tax instalment

- Prior year profit tax reported on the tax return, without taking instalments paid during the previous year into account, is the basis for the current year profit tax assessment.
- In case the taxpayer was liable for the tax on micro enterprise income in 2009, the base for assessment of the profit tax instalment starting 1st January 2010 is the 2009 amount of tax on micro enterprise revenue.
- In case tax on profit related to the previous year was adjusted in the conditions set by the Code of Fiscal procedure, the amount of the quarterly instalment is subsequently adjusted as per the adjusted base starting the quarter when the adjustment occurred.

Profit tax exemption for reinvested profit

Norms provide examples to illustrate how fiscal facilities regarding reinvested profit introduced by Law 329/2009 apply:

- ☑ Production of technological equipment is defined as the in-house production as well as the recognition of fixed assets in accordance with accounting regulations correlated with provisions of article 24 of the Fiscal Code regarding fiscal depreciation.
- ☑ In case investments in technological equipment are not wholly financed by accounting profit, to assess the tax value of this equipment upon which tax depreciation is calculated, the chronological order in which the equipment is recorded in accounting records as fixed assets as per article 24 of the Fiscal Code will be taken in account.
- ☑ In case investments are in progress during several consecutive years, the fiscal facilities are granted for the amount of tangible fixed assets in progress recorded and commissioned during the period from 1st October 2009 to 31 December 2010.

Expense deductibility

The Norms clarify the following issues:

- ☑ Expenses regarding remuneration in the form of own equity instruments which were granted to the employees are not deductible when computing tax on profit;
- ☑ Welfare expenses granted as per collective bargaining and the limitation of their deduction when computing tax on profit;
- ☑ The amount of VAT paid on purchased goods or services in an EU member State in the scope of obtaining taxable income is tax deductible, as well as penalties for late payment and compensation due further to a commercial contract concluded with a non-resident.

Tax on dividends

As per provisions of the Fiscal Code, dividends allocated by a Romanian legal entity are subject to a 10% withholding tax when the dividends are paid by an open investment fund. The Norms specify that these provisions do not apply to optional pension funds or privately managed pension funds because they are not legal entities and do not fall into the category of open investment funds as per the regulations regarding the capital market.

Withholding tax on income obtained in Romania by non-residents

The Norms introduce further clarification regarding which payments fall into the category of royalties and which do not. Thus, it is specified that the following do not represent royalties:

- ☑ amounts paid to obtain exclusive rights for distribution of an item or service;
- ☑ amounts paid by the intermediary distributors of software on the grounds of a contract which usually grants the distribution right for the software without granting the reproduction right;
- ☑ amount paid for software which will be further customized in the scope of its installation.

Provisions regarding refund of tax withheld in excess by the legal Romanian entity upon revenue obtained in Romania by a non-resident are modified and starting 2010, the standard restitution procedure set by the Code of Fiscal Procedure applies.

As per provisions of the Fiscal Code, starting 2011, interest and royalties obtained in Romania by an EU or EFTA resident company which holds at least a 25% interest in a Romanian entity for at least 2 years are free of withholding tax. The Norms specify that exemption will not be granted if, at the date this interest and royalties are paid, the minimum ownership period of 2 years is not over. However, in case the Romanian company or the permanent establishment in Romania of the foreign

company brings proof after date of payment that the ownership period is fulfilled, application for refund of withheld tax can be made.

Mergers, acquisitions and liquidations of commercial companies

By the new Norms:

- ☑ fiscal provisions are correlated with legal provisions regarding commercial companies with respect to the closing date of taxable periods of the companies which are dissolved without liquidation further to a merger or de-merger, as well as the companies which are liquidated.
- ☑ Assessment criteria of the independent feature of the field of business are introduced in the context of fiscal provisions regarding trans-border reorganisation. Thus, the independent feature of business is checked with the selling company, taking into account some conditions specified in the Norms which must all be met.

Income tax

Independent activities

The following additional clarification is brought by the Norms:

- ☑ Interest paid by a bank for cash on hand generated by business is included in gross income as well as income generated from adjacent activities;
- ☑ Income collected subsequent to termination of independent activities further to invoices issued and not collected at the date of termination of activity is included in gross income;
- ☑ Maintenance and operating expenses for business premises are tax deductible, even when supporting documents are in the name of the landlord and not in the taxpayer's name.

New provisions of the Fiscal Code are incorporated in the Norms, such as:

- ☑ Items and ownership rights which are transferred further to reorganisation from one business to another business pertaining to the same taxpayer are not included in gross income if the items are used for the same purpose. However, regulations regarding depreciation of the assets are introduced for this type of reorganisation;
- ☑ Optionally, starting 1st January 2010, income derived from intellectual property, from sale of consignment goods, from agent, commission or commercial mandate contracts can be subject to 16% withheld tax. In this case, tax withheld is final, and maintaining single entry bookkeeping is not mandatory.

Salaries

Some new issues introduced by the Norms are mentioned below:

- ☑ Compensation received upon termination of a labour contract are clearly stated to be subject to taxation;
- ☑ For employees who no longer obtain salary and related income during the year, **the employer must issue the fiscal form upon termination of the labour relationship or upon completion of the termination forms** (legal provisions regarding fiscal forms are thus incorporated);
- ☑ Premiums for professional insurance policies supported by companies for their directors as per Law 31/1990 are not in kind benefits for the individuals;
- ☑ In case of diplomacy offices, consulates and representative offices which have not opted for computing, withholding and paying income tax on behalf of their employees, the obligation to determine the annual income tax on salary migrate from tax authorities to the taxpayer.

Rental income

The amount of investments in movable and immovable items by the user and used free of charge on the ground of a "comodat"

contract is included in gross rental income of the owner, individuals having the right of use or other legal holder.

Investments

Compensation paid by legal entities for exclusion, withdrawal, attribution by inheritance of securities are deemed income from the transfer of securities and do not represent dividends. Special regulations are introduced to determine the tax base in the case of shares as well as fiscal obligations for the above mentioned operations.

Pensions

A single ceiling which is not taxed is set at RON 1,000 for the one-time amounts received from the privately administrated pension funds (pillar II).

Gambling

Detailed regulations are introduced for taxation of profit from casino gambling.

Transfer of personal real estate

- Acquisition of ownership by adverse possession further to a judicial decision is not considered a taxable transfer;
- In case of foreclosure, for transfers other than those by notary or judiciary procedure, the foreclosure authority or the purchaser must ask the tax authorities to determine the tax and to issue the tax decision in case the taxpayer has not fulfilled its obligations within 10 days of the transfer date.

Income from other sources

- Items, services and other rights received from former employers by the pensioner or his/her family as per labour contract or special legislation are taxable (The Fiscal Code only refers to price reductions granted to pensioners by former employers as per labour contract or special provisions);
- Income received on the basis of a management contract/provision of service in the forestry field is taxable as income from other sources.

Annual taxable income

- Statements of realized income are replaced by fiscal returns. The new deadline for submitting fiscal returns and paying the annual tax is 25 May of the following year;
- As per provisions of the Fiscal Code, tax authorities no longer issue tax resolutions. Therefore, all regulations in this respect are abrogated;
- Tax credit from abroad is calculated by the taxpayer for each source of income (computation previously performed by tax authorities);
- It is clearly stated that the tax authority must refund income tax withheld and paid by a Romanian employer on behalf of its Romanian employee who works abroad in the case the Romanian State was not entitled to tax this income in accordance with treaties to avoid double taxation. The refund procedure will be drafted by ANAF.

VAT

VERY IMPORTANT: rules to determine the place of provision of services have changed!

- Taxable entity established in Romania
A taxable entity has its place of economic activities where critical management decisions are taken or where central administrative functions operate. Clarification is made with respect to the implication of a fixed establishment in Romania in the performance of the economic activities performed by a non-resident taxable entity.
- Services rendered to EU and non-EU beneficiaries
To determine the applicable VAT regime for these services,

evidence which establishes whether the non-resident beneficiaries are subject to VAT are set in the Norms. This evidence may consist of: valid VAT code of the beneficiary in the other member State or third country, location of its economic activity/fixed establishment in the Community, as well as information posted on the website which confirm the status of taxable entity and any other relevant information.

- Entity subject to VAT

A taxable entity having the location of its economic activities in Romania but renders services or supplies goods from a fixed establishment located outside Romania to clients which are taxable entities in Romania must issue invoices with Romanian VAT even if the headquarters for its economic activities is not involved in the respective provision of service or supply of goods.

- VAT refund procedure for non-residents (Directive 2008/9/CE)

A new refund procedure applies to applications submitted after 31 December 2009. More information is disclosed in this APEX Team newsletter where Order 4/2010 to approve the Procedures to process applications for VAT refunds submitted by taxable entities not established in Romania but established in another EU member State (MO 32/2010) is presented.

- Technological losses and destruction of excisable products
VAT is not collected for technological losses within the consumption limits set by the taxable entity. However, if there are clues that the technological loss was overstated, tax authorities can amend the percentage loss set by the taxable entity. It is stated that VAT is not collected for excisable products when destruction was approved by the competent authority within the fiscal warehouse.

- Items granted in the scope of sales promotion

The Norms introduce restrictions regarding categories of goods used for in-house purposes granted free of charge in the scope of promoting sales. In this case the supplier issues an invoice to itself, and is obliged to self-assess VAT.

- Import operations

As for services which consist of work/valuations performed on goods outside the EU which will be imported into Romania, VAT is not paid at the customs point at the time of import. The services are taxed separately in accordance with rules applicable to the provision of services.

- Real estate operations

The circumstances where individuals become taxable entities and must register as under the scope of VAT in case of real estate transactions are described. For instance, in the case of construction of immovable items in the scope of their sale, it is considered that the individual performs a continuous economic activity and must register under the scope of VAT.

In case of sale of a plot of land occupied by buildings in progress of being demolished, from the VAT point of view, it is considered that the operation represents the sale of a plot of land and not the sale of a plot of land and of buildings.

The options for VAT on rental operations, leasing and sale of property can also be submitted when a tax inspection is in progress. Only taxable entities established in Romania can exercise the option to make these operations subject to VAT.

- Deduction rights

Invoices transmitted by electronic mail are considered invoices in original. Taxable entities can exercise their right of deduction for VAT mentioned on invoices which do not disclose the VAT registration code for operations performed prior to registration under the scope of VAT.

Non-disclosure of the input VAT as well as the output VAT related to EU acquisitions of goods and services on the VAT return does not trigger the loss of the deduction right by the taxable entity.

It is clearly stated that the right of the taxpayer to deduct VAT

for a period of 5 consecutive years at most starting 1st January of the year which follows the year when the deduction right arises and even after a tax inspection in case VAT mentioned on the invoice was considered input VAT in the period subject to tax inspection.

VAT adjustment

Inactive taxpayers or entities in temporary inactivity whose VAT registration has been cancelled will adjust VAT related to their tangible fixed assets for the net book value or in proportion with the remaining period within the adjustment period, if applicable.

Registration for the scope of VAT

To obtain registration in the scope of VAT in Romania, non-resident taxable entities must submit a declaration under own responsibility accompanied by other supporting documents (the contract or order, for instance).

Taxable entities having in Romania its place of the economic activities, not registered nor required to be registered (such as for instance, insurance companies) which benefit from or render EU taxable services to other EU established taxable entities must apply for registration in the scope of VAT before receiving or rendering the services. The VAT code thus obtained will be used for provision of goods and services within the EU. More information is provided in this APEX Team Newsletter where Order 7 (MO 32/2010) is presented.

Associations in participation

Clarification is made regarding associations in participation:

- o VAT is not collected on goods and services put at the disposition of the association as free of charge by its members in the limit of the percentage of participation set in the association contract;
- o duties and rights regarding VAT deduction, collection and adjustments fall with the associate which administrates the association;
- o allocation of income and expenses to associates in proportion with their percentage of participation is not subject to VAT.

Recapitulative statement

EU services which are not tax exempt in the member State where the beneficiary is established are to be **declared in the recapitulative statement on a monthly basis**. Provisions on checking the exemption applicable in the beneficiary member State have been introduced in the Norms.

Correction of documents

Adjusted invoices are issued for the additional VAT determined by tax authorities by a taxation resolution issued after 1st January 2010, for the period subject to tax inspection.

Excises

New provisions regarding the harmonized excise regime are introduced, as follows:

- General provisions and definitions;
- Excisable products;
- Exceptions to the excise regime for products in the field of energy and electricity;
- Warehousing regime;
- Registered consignee;
- Transfer and reception of excisable products under the suspense excise regime;
- Refund of excises;
- EU transfer and taxation of excisable products after their delivery in the scope of consumption;
- Duties and responsibility of person liable for excise taxes;
- Exemption of excise payment;
- Marking alcoholic products and tobacco.

ORDER 3 dated 4 January 2010 to approve Procedures for receipt of the application for refund by taxable entities established in Romania who paid VAT upon import and had

acquisitions of goods and services from another EU member State (Official Gazette 32/2010)

As per provisions of the Fiscal Code and its Implementation Norms, a taxable entity established in Romania can benefit from a VAT refund of VAT paid upon its acquisitions of goods and services from another member State.

This Order approves the model and content of the following forms:

“Application for VAT refund for taxable entities established in Romania” - (form 318), code MFP 14.13.03.02/18

The application for refund is submitted by the taxable entity established in Romania to be refunded for VAT it paid on movable goods it was supplied with or services rendered to it in a member State where VAT was paid as well as from VAT paid on the imports of goods into this member State.

The application addressed to the member State to which refunds fall is filed in electronic format and submitted by electronic means to the tax authority in charge in Romania via the electronic portal provided by ANAF.

The application comprises:

- The member State to whom the application is made;
- The requested amount of refund;
- For each invoice (or import document) for which refund is requested, the following information must be provided: invoice number, invoice date, nature of the goods (as per predefined codes), and identification data of supplier. For invoices with a tax base larger than Euro 1,000 in general and Euro 250 Euro for petrol, the scanned invoice must be attached to the application

The application must be submitted on 30 September of the tax year which follows the refund period, at the latest, i.e. before 30 September 2010 for acquisitions made in 2009.

ANAF will send the taxpayer a confirmation of receipt of the application and will forward it to the appropriate member State after having checked that the taxpayer was indeed registered under the scope of VAT during the period for refund. The respective member State will also send a confirmation of receipt of the application which must be processed within 4 months starting this date.

“Statement for prorata adjustment of VAT”, (form 319) - code MFP 14.13.03.02/19.

The statement for prorata adjustment of VAT is submitted as per point 49¹ paragraph (8) of Norms if applicable, when, after submitting the application for refund, the prorata deduction is modified further to calculation of the final prorata as per article 147 paragraph (8) of the Fiscal Code in order to correct the VAT amount requested or previously refunded. Adjustment is made during the tax year which follows the respective refund by filing a statement for prorata adjustment of VAT in cases where the applicant has not submitted an application during this year.

As per information posted on the ANAF website, forms 318 and 319 may be submitted starting 22 January 2010.

ORDER 4 dated 4 January 2010 to approve Procedures for processing applications for VAT refunds made by taxable entities who are not established in Romania but are established in another EU member State (Official Gazette 32/2010)

To obtain VAT refunds from Romania, the taxable entity which is not established in Romania sends by electronic means an application for refund which is forwarded by the member State where the taxable entity is established through the electronic portal made available by its member State.

The applicant must provide tax authorities with information requested on the refund application as well as additional requests for information/documents in the Romanian language or ac-

accompanied by a translation into Romanian, certified by a licensed translator.

Deadline for processing the application for refund is:

- 4 months at most starting from receipt date if the tax authority in charge does not request additional information;
- When the tax authority in charge has requested additional information, processing the application is within 2 months of the date the additional information is received or within 2 months of expiry date of the 2 month period to provide this information, but in both cases, no more than 6 months from the date the refund application is received by the tax authority in charge in the member State where the applicant is established;
- In case the tax authority in charge has requested with additional information, the outcome is communicated within 8 months of reception date of the application.

If the application for refund is approved, refund of the approved amount is at last made within 10 working days starting the deadline set at 49 paragraph (21) of the Implementation Norms or in the timeframe set at point 49 paragraph (24) of the Norms in case additional or further information has been requested.

Refund is made in RON by transfer into a bank account in Romania or, upon applicant request, to a bank account in any other member State. In the latter case, the eventual bank commissions for transfer are withheld from the amount refunded to the applicant. Refund is made into a bank account opened in the applicant's name or in the name of another person if identification data for this person were disclosed in the refund application.

The Procedure also presents how to adjust amounts for which refund was already applied to or already refunded further to determination of final prorata VAT.

ORDER 5 dated 4 January 2010 to approve Procedures for processing applications for VAT refunds from taxable entities not registered under the scope of VAT in Romania, established outside the Community (Official Gazette 32/2010)

The Order sets the procedure for VAT refunds to taxable entities not registered under the scope of VAT in Romania, nor obliged to be registered, which are established outside the Community.

To be in a position to be refunded from VAT paid, the taxable entity must appoint a tax representative in Romania in scope of refund and meet conditions set at point 50 paragraph (1) of the Norms, as follows:

- during the refund period, the taxable entity did not have Romania as the location of its economic activities, or a fixed establishment from where economic activities were performed or, in absence of such fixed establishments, its usual domicile or residence;
- during the refund period, the taxable entity has not supplied goods or rendered services deemed to have been supplied/rendered in Romania, except for the following operations:
 - o provision of transport services and auxiliary transport services exempted as per article 143 paragraph (1) letter c) - f), h) - m), article 144 paragraph (1) letter c) and article 144¹ of the Fiscal Code;
 - o supply of goods and provision of services to a person which is not obliged to pay VAT as per article 150 paragraph (2) - (6) of the Fiscal Code.

Tax representatives apply for VAT refund by filing and submitting the "Application for refund for taxable entities not registered under the scope of VAT in Romania which are established outside the Community (313)", code MFP 14.13.03.02/13.

The representative appointed under the scope of VAT refund must submit a power of attorney in a form of a deed at the tax

authorities where it has its fiscal domicile as per provisions of article 18 of the Code of fiscal procedure. To obtain a tax registration code, the appointed tax representative submits the form for tax registration to the tax authority in charge. The tax registration code which is attributed to the appointed representative will be used for the sole purpose of VAT refund to the persons established outside the Community it represents.

Supporting documents from which it results that the person performs economic activity which qualify it as a taxable entity as per article 127 of the Fiscal Code, if it were established in Romania as well as the statements in foreign language, must be accompanied by their Romanian translation, certified by a licensed translator.

Application for refund – form 313:

- is submitted by taxable entities not registered under the scope of VAT in Romania, nor obliged to, which are established outside the Community for refund of VAT charged by other taxable entities and paid to the supplier with respect to movable items they were supplied with or services they have been provided with, as well as VAT paid at the time of import of goods in Romania. The application for refund is submitted within a period of at least 3 months and at the most 1 year of the underlying transaction or a period shorter than the 3 months remaining in a calendar year.
- is prepared in electronic format (floppy) using guidance on its preparation downloaded from the Ministry of Economy and Finance website and is accompanied in paper format printed by the applicant, duly signed and stamped.
- is submitted in electronic and in paper format at the most 9 months starting the end of the year during which VAT becomes payable. Submission is made in person at the tax authority premises or by post using a registered letter.

Applications for refund are processed within 6 months starting the date when the application together with any requested documentation is received by the tax authority in charge as per article 50 paragraph (12) of the Norms. Time for processing is increased by the period between the date documents are requested and the date documents are provided.

VAT refund is made in RON by transfer into a bank account opened at a bank in Romania as instructed by the representative of the taxable entity. Bank commissions are borne by the taxable entity.

ORDER 7 dated 4 January 2010 to approve the model and content of forms regarding registration under the scope of VAT (Official Gazette 32/2010)

The Order approves the model and content of the following forms:

- "Statement of turnover in case of taxable entities for whom the tax period is the quarter and have not made EU acquisitions of goods during the previous year (form 094)", code MFP 14.13.01.10.11/t;
- "Tax registration form / Acknowledgment of amendments for non-resident taxpayers established in EU who register directly (form 090)", code MFP 14.13.01.10.11/n;
- "Form for registration under the scope of VAT / Acknowledgment of amendments for the other persons who make EU acquisitions or for services (form 091)", code MFP 14.13.01.10.11/a.

Form 091 is submitted by persons who have the place of their economical activities in Romania but are not liable to VAT but have to register as per article 153¹ before performing the contemplated operations because:

- o they will make EU acquisitions of goods over the ceiling of Euro 10,000 per year or exercise the option to register for them;
- o they will make EU acquisitions of services;

- o they will provide EU services.

The VAT will be communicated to the partners with whom these acquisitions of services will be made or these services rendered. It will also be disclosed in the recapitulative statement 390 that will have to submit although these persons remain locally not liable to VAT.

- "Form for registration under the scope of VAT / Acknowledgment of amendments for taxable entities which place of economical activities is located outside Romania but are established in Romania by a fixed establishment (form 093)", code MFP 14.13.01.10.11/s.f.

ORDER 75 dated 21 January 2010 to approve the model and content of form 301 "Special VAT return" (Official Gazette 59/2010)

ORDER 76 dated 29 January 2010 to approve the model and content of form 390VIES "Recapitulative statement of EU supplies/acquisitions/services" (Official Gazette 67/2010)

ORDER 77 dated 29 January 2010 to approve the model and content of form 300 "VAT return" (Official Gazette 67/2010)

ORDER 6 dated 4 January 2010 to approve procedures to approve a half year/year tax period for persons registered under the scope of VAT (Official Gazette 32/2010)

The local tax authority where the taxable entity has its domicile or is in charge of its administration can approve the use of a fiscal period other than the month or the quarter, upon request of the person registered under the scope of VAT as per article 153 of the Fiscal Code in the conditions set at point 80 paragraph (2) - (3) of the Norms, as follows:

- half year if the taxable entity carries out taxable operations for only a period of 3 months at most during half a year;
- the tax year if the taxable entity carries out taxable operations for only a period of 6 months at most during a year.

Application is made using form 306 "Application for using half a year or the year as tax period for VAT," code MFP 14.13.03.02/p and is submitted in person at the premises of the tax authority in charge or by post via registered letter by 25 February of the year for which the option is exercised, at the latest.

The application is accompanied with documents which disclose the activity performed and its periodicity:

- statement under own responsibility regarding the activity effectively carried out;
- trial balances prepared for the previous year, contracts or orders, as the case may be;
- sales journal for the previous tax year;
- any relevant document for decision making.

The application is processed within 45 days from its submission as per article 70 of the Code of fiscal procedure.

ORDER 14 dated 5 January 2010 regarding conditions and modalities to suspend tax inspection (Office Gazette 40/2010)

A tax inspection can be suspended by the head of the inspection body upon proposal of the head of department and inspection bodies which perform the tax inspection.

The tax inspection can be suspended when one of the following conditions is met and only if the fact that the condition is not met, impedes completion of the tax inspection:

- to perform one of several cross-checks;
- to remediate to deficiencies disclosed during a tax inspection and trigger "requests to take measures set by tax inspection bodies;"

- to issue a resolution from the Central Fiscal Committee;
- to perform an examination in accordance with the Code of fiscal procedure;
- to make special investigation in order to identify individuals or to establish the reality of transactions;
- upon written request of the taxpayer further to the occurrence of objective reasons;
- to request further information from similar tax authorities in other EU member States or in countries with which Romania has signed international conventions regarding exchange of information for tax purposes;
- to draft and present the transfer price file in cases where taxpayers which carry out transactions with related parties;
- upon proposal of ANAF general inspectorate which coordinates tax inspection activities.

ORDER 1850 dated 29 December 2009 to amend and complement ANAF President Order 1438/2009 to approve forms used for the purpose of collecting tax liabilities (Official Gazette 7/2010)

ORDER 62 dated 20 January 2010 to set the indexed amount which is granted under the form of nursery vouchers for the first half of 2010 (Official Gazette 56/2010)

For the first half of 2010, starting February, the monthly amount which is granted in the form of nursery voucher is RON 370.

LAW 11 – State Budget for 2010 (Official Gazette 61/2010)

For 2010, starting with salaries pertaining to the month of January 2010, the **contribution** rates to the budget of the National Fund for **Health** social insurance **remain at those in force in 2009**, meaning:

- 5.5% for the employee, as set at article 257 of Law 95/2006, with its further amendments and complements;
- 5.2% for the employer, as set at article 258 of Law 95/2006, with its further amendments and complements;
- 10.7% for voluntary insured persons, as set at article 259 paragraph (6) of Law 95/2006, with its further amendments and complements.

LAW 12 – Budget of State Social Insurance for 2010 (Official Gazette 61/2010)

Starting 1st January 2010, the value of one pension point earned is RON 732.80.

Average gross salary used for the preparation of the Budget of State Social Insurance is RON 1,836 for 2010.

The amount of the death indemnity is set:

- RON 1,836 in cases of death of an insured person or pensioner;
- RON 918 in cases of death of an insured person's family member.

Contribution rates to the Budget for **unemployment** insurance as well as to the Budget for **social insurance** (pension) **remain at those in force in 2009**, as follows:

- 0.5% unemployment contribution by the employer;
- 0.5% unemployment contribution by the employee;
- 1% unemployment insurance contribution by persons who conclude a contract with the unemployment insurance fund;
- 0.25% contribution to fund the guarantee payment of salary liabilities by the employer as per article 7 paragraph (1) of Law 200/2006, with its further amendments and complements.

Contribution rates to State social insurance (pension) remain therefore:

- 31.3% for normal working conditions: 10.5% for the em-

- ployee and 20.8% for the employer;
- 36.3% for particular working conditions: 10.5% for the employee and 25.8% for the employer;
 - 41.3% for special working conditions: 10.5% for the employee and 30.8% for the employer.

The percentage out of the employee contribution redistributed to the mandatory private pension funds (pillar II) as per Law 411/2004 regarding privately administrated pension funds remains at 2.5%.

INSTRUCTION 1 dated 4 January 2010 regarding the reference interest rate of the National Bank of Romania (NBR) for the month of January 2010 (Official Gazette 2/2010)

For the month of January 2010, the NBR reference interest rate is 8% per annum.

REGULATION 1 dated 12 January 2010 to amend BNR Regulation 18/2009 on the administration framework for activities of banking institutions, internal process to assess adequacy of equity to counteract risks and conditions from outsourcing these activities (Official Gazette 39/2010)

REGULATION 2 dated 12 January 2010 to amend NBR Regulation 20/2009 regarding non banking financial institutions (Official Gazette 39/2010)

REMINDER – Book entries regarding bank deposits in foreign currency

In accordance with accounting regulations introduced by OMFP 3055/2009 applicable as at 1st January 2010, closing deposits in foreign currency is recording using the exchange rate communicated by NBR for the date the deposit is closed.

Exchange differences between the rate at set-up date or the rate at which the deposit is valued in the books and the NBR exchange rate on the date the deposit is closed are recorded in foreign exchange gain or loss, if any. Previously, the historical exchange rate in force at set-up was also used at closing.

REMINDER – Which exchange rate to use

REMINDER – VAT – Amendments to implementation instructions of Fiscal Code starting 1st January 2010

We remind several Orders which entered in force on 1st January 2010 amending previous instructions in the field of VAT:

- OMFP 3417/2009 abrogates Order 1823/2007 to approve implementation Instructions for simplification measures in the field of multi-party VAT operations with the European Community with respect to work on tangible movable items as well as implementation Instructions for simplification measures in the field of VAT for goods returning to the Community and fiscal treatment for repairs performed during and after the guarantee period. Starting 1st January 2010, the provisions of Order 3417/2009 apply (mentioned in APEX Team Newsletter no. 12 _2009);
- OMFP 3418/2009 to amend Implementation Norms for VAT exemptions with respect to international traffic of goods further to provisions of article 144 point (1) of Law 571/2003 – Fiscal Code with its subsequent amendments approved by OMFP 2218/2006 (mentioned in APEX Team Newsletter no. 12 _2009);
- OMFP 3419/2009 to amend and complement Implementation Instructions for VAT exemption for operations set per article 143 point (1) letter a) - i), article 143 point (2) and article 144¹ of Law 571/2003 – Fiscal Code with its further amendments approved by OMFP 2222/2006 (mentioned in APEX Team Newsletter no. 12 _2009);
- OMFP 3420/2009 to amend and complement Orders of the Ministry of Public Finance, as follows:
 - o Order 2216/2006 to approve Implementation Instructions for simplification measures regarding transfers and assimilation to EU acquisitions set per article 128 point (1) and article 1301 point (2) letter a) of the Fiscal Code.
 - o Order 2226/2006 on the use of financial and accounting forms by the persons set at article 1 of Accountancy Law 82/1991, republished;
 - o Order 500/2007 to approve the Norms regarding the procedure to grant postponement certificate for VAT at the customs point and issue of guarantees for imports of goods.

Scope	Exchange rate
Ceiling for intra-community acquisitions of Euro 10,000, applicable during a calendar year	3.3817 RON/Euro (in force as of the date Romania joined the E.U.)
Taxable entity established in Romania which realizes a turnover exceeding the ceiling of Euro 35,000 during 2009 must register under the scope of VAT 10 days after the end of the month when the ceiling was reached/exceeded	3.3817 RON/Euro (in force as the date Romania joined the E.U.)
Ceiling of Euro 100,000 to set the fiscal period regarding VAT	4.2282 RON/Euro (in force as at 31 December of the previous year)
Ceiling of Euro 35,000 regarding distance sales	3.3817 RON/Euro (in force as the date Romania joined E.U.)
Non-profit organisations, trade unions and employer organisations are also exempted from corporate tax for revenue derived from economic activities obtained during a fiscal year up to the equivalent in RON of Euro 15,000, but no more than 10% of total income exempt from corporate tax	4.2373 RON/Euro (average exchange rate for 2009)
To determine the limit of deductibility for the following expenses :	
<input checked="" type="checkbox"/> employer contributions to optional pension funds has a limit of Euro 400 per annum per employee	NBR exchange rate for date expense was recorded
<input checked="" type="checkbox"/> voluntary health insurance premiums up to a limit of Euro 250 per annum per person	NBR exchange rate for date expense was recorded
<input checked="" type="checkbox"/> fees and contributions to non-governmental or professional associations (in the limit of Euro 4,000 per annum)	NBR exchange rate for payment date of fees
Income tax Translation of employee contributions withheld in RON into Euro for optional pension funds to check compliance with the annual ceiling of Euro 400	NBR exchange rate for last day of the month for which payroll is computed.
Revenue derived from independent activities To determine the limits of deductibility for contributions to optional pension funds topped at Euro 400 per annum per person as well as voluntary health insurance premiums up to a limit of Euro 250 per annum per person	4.2373 RON/Euro (average exchange rate for 2009)
Excise taxes, special tax on automobiles, tax on crude oil from domestic production	4.2688 RON/Euro (in force as at 1 st October 2009, published by the E.U. Official Gazette)

H.R. KEY FIGURES

2010 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	
Average monthly gross salary (INSSE November 2009)	1,866 RON	
Per diem (in Romania)		
Employees in the public sector	13.00 RON	
Employees in the private sector (x 2.5)	32.50 RON	

INFLATION RATE (source: www.insse.ro)

The National Institute for Statistics has published the inflation rate for 2009. The evolution of the last 9 years is presented below:

Year	2000	2001	2002	2003	2004
Inflation rate	45.7 %	34.5 %	22.5%	15.3%	11.9%
Year	2005	2006	2007	2008	2009
Inflation rate	9%	6.56%	4.84%	6.3%	5.59%

INFORMATION – Certification of the annual tax on profit return by a tax consultant

As per the provisions of article 83 paragraph (5) of OG 92/2003 – Code of fiscal procedure, the annual tax returns of a taxpayer which is a legal entity are certified by a tax consultant in the conditions of the law, except for those for which audit is mandatory.

From information received from ANAF, these provisions apply to annual returns regarding tax on profit (form 101) which are due after 1st January 2010, therefore to the 2009 profit tax return. Exception to the rule does not apply to taxpayers which opted to be audited even though an audit was not mandatory. Besides, ANAF stated that it is not possible as per provisions of the Code of fiscal procedure to subordinate submission of profit tax returns to its signature by a tax consultant, but a letter will be sent after deadline for submitting tax on profit returns to taxpayers who submitted tax on profit returns which were not certified. This also applies to form 101 when submitted online.

REMINDER – Recapitulative statement (390 VIES) to be submitted monthly

We remind that in accordance with article 156⁴ of the Fiscal Code as amended by OUG 109/2009, that starting 2010 the form 390 VIES "Recapitulative statement of EU supplies/

acquisitions/services" must be filed and submitted by any taxable entity registered under the scope of VAT **monthly** as per article 153 or 153¹ of the Fiscal Code **at the latest on the 15th of the month which follows the month** being reported.

The new form was approved by Order 76 dated 29 January 2010 (Official Gazette 67/2010)

In the recapitulative statement, the followings are disclosed:

- EU supplies and acquisitions, as per regulations in force until 2010;
- Acquisitions of services for which the place of taxation is the member State of the beneficiary, starting 2010. The provision of services which are VAT exempt in the member State where they were taxable are not to be reported in the recapitulative statement.

The recapitulative statement is submitted for each month a VAT liability occurs for such operations.

REMINDER – Do not forget to request tax residence certificates issued in 2010 from your foreign business partners

Tax residence certificates issued in 2009 are valid for the first 60 days of 2010.

REMINDER – Valuation of monetary items in foreign currency

Do not forget that starting 2010, at the end of each month, monetary items (cash on hand, receivable, payable) denominated in foreign currency are valued at the NBR exchange rate in force on the last banking day of the month.

It also applies to receivables and payables denominated in RON but pegged to a foreign currency for collection/disbursement.

For this purpose, the following exchange rates are to be taken into account:

- exchange rate published by NBR the day before when recording amounts denominated in foreign currency during

the month. The exchange rate published by NBR on Friday is valid from Saturday to Monday included;

- exchange rate published by NBR at closing of the last foreign exchange transaction session of the month (meaning published the last banking day of the month) to value monetary items at the end of the month.

Exchange rates to use for valuation at the end of January 2010:

1 Euro = 4.1220 RON; 1 USD = 2.9509 RON;

1 CHF = 2.8101 RON; 1 GBP = 4.7642 RON

FEbruary 2010 – 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 the employees' electronic register with information regarding labour contract termination, if case.

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 revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month**
- To organise a stock count of inventories if the enterprise does not use a perpetual inventory system
- To issue final invoices for the month of February 2010

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 1st February is the last day to submit

- "The application to opt for the determination of net income under the real regime" (effective amounts) accompanied by a "self-assessment of income derived from independent activities (form 220)" or the self-assessment of rental income for taxpayers which wish to opt for the determination of their revenue based on effective amounts,
- The declarations to local public authorities which are used for the computation of tax on land, tax on buildings and tax on means of transport. **The obligation to declare vehicles or buildings held under a finance lease contracts falls with the user.**

That Monday 1st February is the last day for

- Full payment of vehicle tax by user, foreign natural person or legal entity, which applies for temporary registration in Romania for means of transport in case registration is made for a period which lasts beyond 31 December of the fiscal year when the application is requested, as follows:
 - o Annual tax if the registration is for the fiscal year,
 - o The tax afferent to the period from 1st December and the first of the month following the month when the registration expires in case the registration expires before 1st January of the subsequent same year.

That Friday 5 February is last day to submit

- Form 092 (amendments) to change VAT return periods from Quarterly to Monthly in case an EU acquisition occurred in January 2010. Starting February 2010, VAT returns will be submitted monthly.

That Wednesday 10 February is the last day to submit

- Return for collection of hotel tax

That Monday 15 February is the last day to submit

- INTRASTAT statement for January 2010 (submitted online)
- Recapitulative statement of EU Supplies/acquisitions/services (form 390)* for January 2010.**

That Monday 15 February is the last day to pay

- Hotel tax
- Advertising service tax

That Thursday 25 February 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)*

Annual tax on profit return (form 101)* for taxpayers which, at this date, have completed closing the books for financial year 2009, non-profit organisations as well as for taxpayers who derive most of their income from the cultivation of cereals, technical plants, tree husbandry and viticulture;

- 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
- Application for use of a period other than month or quarter by taxable entities registered under the scope of VAT (form 306)
- Informative statement regarding delivery of goods and provision of services realized in 2009 (form 392A)
- Informative statement regarding delivery of goods, provision of services and acquisitions realized in 2009 (form 392B)
- Informative statement regarding income obtained from the sale of tickets for international road transport of persons with Romania as point of departure in 2009 (form 393).

That Thursday 25 February is the last day to pay

- Excise taxes
- Tax on crude oil and natural gas from domestic production
- Withholding tax on non-resident income
- Final tax on profit for 2009 for taxpayers which, at this date, have completed closing the books for financial year 2009, non-profit organisations** as well as for taxpayers who derive most of their income from the cultivation of cereals, technical plants, tree husbandry and viticulture;
- 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 Monday 1st March is last day

- of validity of 2009 tax residence certificate based on which payments can be made to non-residents in 2010 as per the provisions of the Treaty to avoid double taxation signed between Romanian and the respective State.

That Monday 1st March is the last day to submit:

- Annual return on income tax withheld on income from independent activities
- Annual return for taxation of Representative Offices
- Fiscal forms (Form 210) afferent to 2009**
- Informative statement of savings income obtained in Romania by individuals resident in the other EU member States, third countries and dependant or associated territories (OMEF 564/2007) – form 400.

IMPORTANT

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.





56 Boulevard Dacia,
District 2, Bucharest

Tel: +40 (0) 31-809 2739

Tel: +40 (0) 74-520 2739

Fax: +40 (0) 31-805 7739

E-mail: office@apex-team.ro

Site: www.apex-team.ro

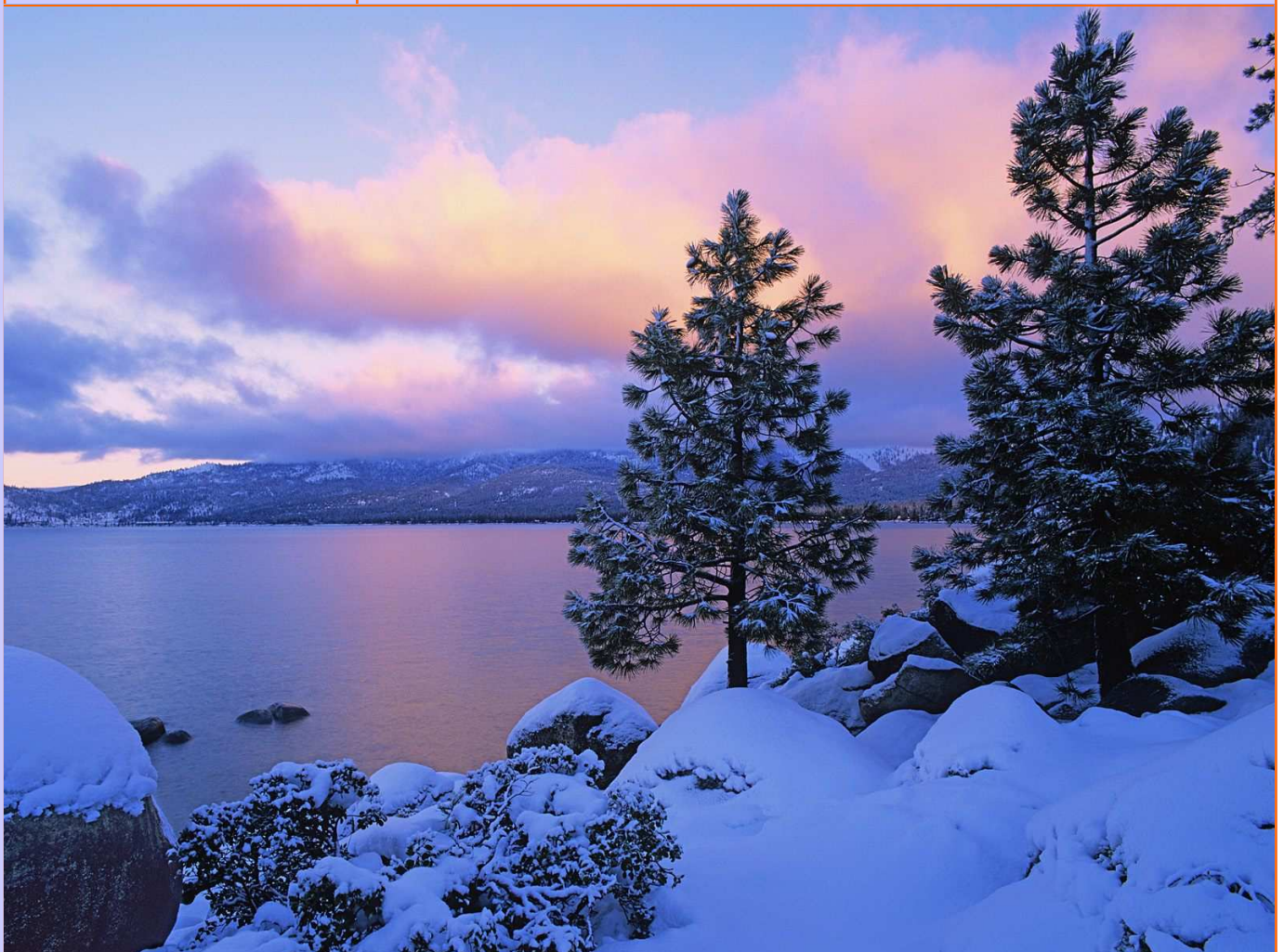
**ACCOUNTING AND PAYROLL
EXPERT TEAM**

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 »**
- Start up services**
- Organization of the accounting function**
- Assistance in implementation of ERP**
- Training**



The above information is a short summary of recently published information and is not intended to be advice on any particular matter. APEX Team International disclaims liability to any person in respect of anything done in reliance of the contents of these publications.