

Romania, Bucharest
Blvd Dacia 56, District 2
Phone: +40 (0)31 809 2739
Phone: +40 (0)74 520 2739
Fax: +40 (0)31 805 7739
E-mail: office@apex-team.ro

REGULATION 6 dated 9 May 2012 to amend and complement Regulation 4/2005 of the National Bank of Romania (BNR) regarding foreign currency as well as to abrogate BNR Norm 4/2005 regarding performance of exchange operations (Official Gazette 341/2012)

The Regulation amends the framework regarding performance of foreign currency operations in Romania.

Payments, collections, transfers and any similar operation deriving from sale of goods and provision of services between residents, irrespective of the legal relation which rules them are only made in the national currency (RON) except for operations set in Appendix 2, "Categories of residents which may perform operations in foreign currency," which may therefore be performed in foreign currency.

Payments, collections, transfers and any similar operation between residents which represent **compensation for work performed**, irrespective of the underlying legal relation are **only made in the national currency (RON)**.

As per the Regulation, the following are considered residents:

- individuals – Romanian citizens and foreigners as well as stateless individuals with their domicile in Romania as supported by identity documents issued as per law;
- legal entities and any other entity with registered headquarters in Romania as well as individuals, Romanian citizens, foreigners and stateless individuals with domicile/residence in Romania which are licensed and/or registered under the scope of carrying out economic activities on the Romanian territory, as independent, in accordance with conditions set by legislation in force;
- branches, agencies, representative offices, offices of foreign legal entities as well as any other form of foreign entity registered and/or licensed to operate in Romania.

The provisions of Appendix 2 of Regulation 4/2005 updated by this Regulation (no. 6/2012) regarding categories of residents which may perform operations in foreign currency are as follows:

- a) legal entities which make payments and collections without intermediary deriving from contracts of foreign trade and of provision of services abroad (import-export of goods and services) on the basis of commission contracts concluded by principal and agent or between principal of a non resident and the resident beneficiary as well as by foreign trade contracts;
- b) legal entities which make payments and collections without intermediary on the basis of sub enterprise contracts deriving from international economic cooperation, export contracts for complex projects and in respect of products with a long manufacturing cycle;
- c) individuals, legal entities and other entities for operations deriving from commerce made in ports, airports and frontier check points assimilated to free zones, or commerce during the foreign journey of international trains, planes and ships;
- d) individuals, legal entities and other entities for operations expressly set in legal provisions;
- e) individuals, for **operations with an occasional feature** made between them;
- f) individuals, legal entities and other entities for operations without intermediary deriving from organisation and/or provision of foreign services such as international transport of goods and persons as well as international tourism;
- g) individuals, legal entities and other entities for operations without intermediary deriving from foreign contracts for "lohn" processing on the basis of cooperation contracts where named resident partners are authorized to transform/improve materials/ processes;
- h) individuals, legal entities and other entities for operations made abroad;
- i) legal entities for payments made to suppliers and sub suppliers in respect of goods and services which are a component of the exported products, which contribute to the performance of the export of services.

IMPORTANT – Publication of annual financial statements

We emphasize provisions of article 185, paragraphs 1 and 4 of Law 31/1990 regarding commercial companies:

"(1) In the conditions set at Accountancy Law 82/1991, republished, the Board of Directors or the Supervisory Board, must submit annual financial statements and, if applicable, the report issued by "cenzori" or auditors to territorial offices of the Ministry of Public Finance, both in paper and electronic format or only in electronic format to which an extended electronic signature is attached,.

"(4) Commercial companies with an **annual turnover greater than RON 10 million** must **publish an**

Contents:

- Harsher National Bank regulations regarding operations in foreign currency – employees of a rep. office paid in RON
- For operations in foreign currency, a branch is subject to same provisions as a commercial company
- Announcement in Official Gazette regarding 2011 financial statements when turnover exceeds RON 10 million
- VAT adjustments and related form 307
- Ex officio tax registration
- Public sector employees recover pay cuts in 2 steps
- Ceiling for tax allowed daily allowances for business trip increases starting 1st June 2012
- Face value of luncheon voucher remains RON 9
- 30 June 2012 – deadline to benefit from facilities regarding outstanding fiscal liabilities as at 31 August 2011
- Statement 222 – mandatory return upon arrival of a secondee
- Determination of fiscal residence of an individual
- Valuation of monetary items in foreign currency
- June 2012 Agenda
- Key HR indicators



If turnover exceeds RON 10 million, must announce submission of 2011 financial statements in Official Gazette

announcement in the Official Gazette of Romania, Part IV-a, by which submission of documents set at paragraph (1) is confirmed."

In previous years, this announcement was published upon submission of financial statements to the Trade Register. Due to the fact that 2011 financial statements are only submitted to tax authorities, this publication obligation lays with the taxpayer.

To comply with this obligation, we recommend submission of the following documents to the Official Gazette:

- an accompanying letter which may be downloaded from http://www.monitoruloficial.ro/docs/159_cerere%20publicare%20PIV.pdf;
- the announcement prepared on computer, signed and stamped by the legal representative of the company. A model may be downloaded from http://www.monitoruloficial.ro/docs/373_anunt.pdf;
- an appendix disclosing the number of characters in the announcement;
- a power of attorney for the person who will submit the document for publication;
- the document which proves payment of the fee for publication;
- details of the company (contact person, phone number).

The appendix disclosing the number of characters of the announcement may be obtained from a text editor and, for instance, if drafted using Microsoft Word:

- select the full text to be published (Ctrl - A);
- select Word Count on the bottom left bar (Tools);
- copy the displayed window by pressing Alt-Print Screen at the same time;
- copy the selected image with the "paste" command by pressing Ctrl - V at the same time, and print.

Where and how may the fee for publication be paid?

- at the cashier's desk located in the centre for public inquiries at the Official Gazette;
- by payment order upon receipt of the invoice which is issued for documents transmitted by fax. The invoice for RON 28.80 also includes the price of one copy of the Official Gazette.

How to obtain the Official Gazette of Romania, Part IV-a?

- at the library located in the centre for public inquiries at the Official Gazette;
- by e-mail for subscribers, at the date of publication, in electronic format of the Official Gazette, Part IV-a;
- by mail or, in case of documents transmitted by fax, after printing.

ORDER 640 dated 3 May 2012 to approve model and content of form 307 "Statement regarding amounts deriving from VAT adjustments" (Official Gazette 316/2012)

The Order approves model and content of form 307, "Statement regarding amounts deriving from VAT adjustments."

The statement is completed and submitted by a:

1. taxable entity, beneficiary of a transfer of assets set at article 128 paragraph 7 of the Fiscal Code with its further amendments and complements, in quality of successor of the assigner in respect of adjustment of the deduction right if it is not registered under the scope of VAT as per article 153 nor registers under the scope of VAT after the transfer;
2. lessee/user of tangible assets purchased by lease contract if the transfer of the ownership right of the items occurs after withdrawal from the list of persons registered under the scope of VAT of the lessee/user as per provisions of article 152 paragraph 7 of the Fiscal Code and point 61 paragraph 9 of its Implementation Norms approved by Government Decision 44/2004. As per these provisions, in case of tangible assets acquired by lease contract, if the transfer of the ownership right of the assets occurred after withdrawal of the lessee/user from the list of persons registered under the scope of VAT in accordance with provisions of article 152 paragraph 7 of the Fiscal Code, the lessee/user must adjust its VAT position at on or before the 25th of the month following the month when the transfer of ownership right occurred:
 - o deductible VAT regarding capital items, including paid or unsettled VAT prior to the date of transfer of the ownership right as per provisions of article 149 of the Fiscal Code and point 54 of its Implementation Norms;
 - o deductible VAT regarding tangible fixed assets other than assets which are considered capital items in accordance with article 149 of Fiscal Code, pertaining to non depreciated amounts at the time of transfer of the ownership right in accordance with article 128 paragraph 4 letter c) of the Fiscal Code.
3. taxable entity where its registration under the scope of VAT was cancelled as per provisions of article 153 paragraph 9 letters a) - e) or letter g) of the Fiscal Code which has not made VAT adjustments, as per articles 128 paragraph 4, article 148, 149 or 161 of the Fiscal Code, in its last submitted VAT return prior to withdrawal from the list of persons registered under the scope of VAT or which made inaccurate adjustments. As per provisions of the mentioned article, tax authorities cancel ex officio the registration under the scope of VAT of a person in the following circumstances:
 - o the person is declared inactive as per provisions of article 78¹ of the Code of Fiscal Procedure starting the date when it has been declared inactive;
 - o the person has entered in temporary inactivity, registered with Trade Register as per law, starting the date of registration of the status of temporarily inactive with Trade Register;
 - o the shareholders/directors or the taxable entity itself do not have a clean fiscal file as per article 2

Form 307: Declaratie privind sumele rezultate din ajustarea taxei pe valoarea adaugata. The form includes sections for: 1. DATE DE IDENTIFICARE A PERSONEI JURIDICE (Identification data of the legal entity), 2. DATE DE IDENTIFICARE A PERSONEI FIZICE (Identification data of the natural person), 3. DATE DE IDENTIFICARE A BUNURILOR TANGIBILE (Identification data of tangible assets), and 4. DATE DE IDENTIFICARE A BUNURILOR TANGIBILE DE CAPITAL (Identification data of capital tangible assets). It also contains a section for the taxpayer's signature and stamp.

- paragraph 2 letter a) of Government Ordinance 75/2001 regarding organisation and operation of the fiscal file (activation of joint liability with the insolvent debtor which is established by a decision of tax authorities which is final considering the administrative complaint procedures or judicial decision, if the case), starting the date of communication of the cancellation decision by tax authorities;
- o no VAT return was submitted during a calendar half year, starting the first day of the second month of the subsequent calendar half year;
 - o the VAT returns submitted in 6 consecutive months during a calendar half year if the fiscal period for the taxpayer is the month and the VAT returns submitted during 2 consecutive fiscal periods during a calendar half year if the fiscal period for the taxpayer is the quarter disclose no acquisition of goods/services or no supply of goods/provision of services in these declaration periods;
 - o the person was not obliged to apply for registration or was not entitled to apply for registration under the scope of VAT, upon request of the taxable entity or ex officio by tax authorities;
 - o upon withdrawal from the list of persons registered under the scope of VAT in case of taxpayers which have not exceeded the exemption threshold, upon request of the taxable entity.

Submission and deadline

The statement is submitted with local tax authorities where the fiscal domicile of the taxable entity is located or to the tax authorities where the taxable entity is registered. The statement is filed by the taxable entity or its representative at tax authority premises or sent by registered mail.

The statement must be submitted on or before the:

- 25th of the month following the month when the transfer of assets occurred;
- 25th of the month following the month when the transfer of ownership right of tangible assets acquired by lease contract occurred;
- 25th of the month following the month when the obligation to declare the amounts deriving from VAT adjustments occurred for the taxable entity where registration under the scope of VAT was cancelled as per article 153 paragraph 9 letters a) - e) or letter g) of the Fiscal Code and has not made the VAT adjustments in accordance with articles 128 paragraph 4, article 148, 149 or 161 of the Fiscal Code in its last VAT return prior to withdrawal from the list of persons registered under the scope of VAT or has made inaccurate adjustments.

Adjustment of statement

Statements initially submitted may be adjusted by submitting a statement in the same format by ticking the caption, "adjusted statement," on the form. Adjustment is not possible for fiscal periods which were subject to a tax inspection or for which a tax inspection is in progress.

Payment of amounts deriving from adjustments

The persons which must submit form 307 must settle the amount representing VAT to be paid to the State Budget deriving from adjustments in accordance with articles 128 paragraph 4, article 148, 149 or 161 of the Fiscal Code by the day they must submit this form as per provisions of article 157 of the Fiscal Code, in RON, in cash, by bank transfer or postal order to account 20.10.01.01.05, "VAT to pay to the State Budget deriving from adjustments," which is opened at the Treasury of the tax authority in charge, disclosing the tax registration code or the Personal Numeric Code of the payer, as per case.

VAT credit amounts deriving from VAT adjustments made by taxable entities where registration under the scope of VAT was cancelled because they did not exceed the exemption threshold of Euro 35,000 are refunded as per legal provisions applicable in this respect.

ORDER 714 dated 16 May 2012 to approve Procedures regarding tax registration, ex officio or upon request of other authorities which administer fiscal receivables, of a taxpayer which has not complied with its obligation to register for tax purposes as per law (Official Gazette 350/2012)

We mention the main provisions of the procedures introduced by this Order.

Subject to registration

The procedure applies to persons legally subject to fiscal legislation, i.e. individuals, legal persons and entities which are not legal persons which have the obligation to submit the application for tax registration as well as secondary establishments which must register for settlement of income tax withheld from their employees' salaries.

The procedure does not apply to individuals who have a Personal Numeric Code (CNP) and are subject to income tax.

Registration procedure

Tax authorities perform ex officio tax registration further to their own findings or upon request of another authority which administers fiscal receivables. In this scope, tax authorities transmit a notification regarding its ex officio tax registration to the applicable taxpayer which is communicated as per article 44 of the Code of Fiscal Procedure.

No notification is issued when ex officio tax registration is, further to findings of tax inspection bodies or to a final and binding judicial decision, transmitted by judicial authorities where it is decided to introduce misdeeds in the fiscal file of non resident individuals who are not registered in Romania.

The ex officio registration ends if, in the timeframe set in the notification, the following circumstances occur:



**New form 307
to declare VAT
adjustments**





- the taxpayer submits the form for tax registration and tax registration is performed on the grounds of this form;
- the taxpayer files documents from which it results that there is no obligation to apply for tax registration.

In case where, after expiry of the timeframe set in the notification,

- the taxpayer has not presented himself/herself at tax authority premises,
- the documents which were filed do not justify termination of the tax registration procedure,
- ex officio tax registration derives from findings of tax inspection bodies or a final and binding judicial decision transmitted by judicial authorities where it is decided to introduce misdeeds in the fiscal file of non resident individuals who are not registered in Romania,

tax authorities continue ex officio registration of the taxpayer by issuing and transmitting the ex officio tax registration Decision. The date of ex officio registration is the communication date of the ex officio tax registration Decision. Within 2 business days, the tax registration certificate is issued and communicated to the respective taxpayer as per provisions of article 44 of the Code of Fiscal Procedure.

Upon taxpayer registration, sanctions for not having submitted the form for tax registration in the legal timeframe also apply.

ORDER 700 dated 11 May 2012 to approve Procedures for ex officio amendment of fiscal status ("vector fiscal") regarding VAT as well as model and content of forms (Official Gazette 356/2012)

When this Order enters in force, i.e. 25 May 2012, Order 1786/2010 to approve the "Procedures for ex officio amendment of the fiscal status ("vector fiscal") regarding VAT as well as model and content of forms" published in the Official Gazette 292/2010 is abrogated. The procedure applies in the cases set at the Fiscal Code for registering ex officio or cancelling ex officio the registration under the scope of VAT.

The Order approves the following forms:

- Notification regarding ex officio registration under the scope of VAT;
- Decision regarding ex officio registration under the scope of VAT;
- Decision regarding ex officio cancellation of registration under the scope of VAT;
- Decision regarding correction of material errors regarding ex officio registration under the scope of VAT/ex officio cancellation of registration under the scope of VAT.

ORDER 647 dated 4 May 2012 to amend Appendix 1 of ANAF Presidential Order 52/2012 to approve model and content of forms set at Title III of Law 571/2003 – Fiscal Code (Official Gazette 316/2012)

The Order amends form 221, "Statement regarding agricultural income taxed on income quota," code 14.13.01.13/9.

We mention that the obligation to submit form 221 lays with individuals who derive income in cash and/or in kind from the transformation and disposal of flowers and vegetables in greenhouses aimed for this purpose and/or by irrigation as well as from the culture and disposal of shrubs, decorative plants and mushrooms, from growing young vines, trees, etc., for taxpayers whose income is determined on the basis of income quota.

Due date for submission of form 221 was 25 May 2012.

EMERGENCY ORDINANCE 19 dated 16 May 2012 to approve measures to recover pay cuts (Official Gazette 340/2012)

For staff paid from public funds, the gross amount of base salary, of pay for base position, of salary for base occupation, of salary for base position, of compensation for occupation is increased in 2 steps as follows:

- a) by 8%, starting 1st June 2012, of the amount granted for the month of May 2012;
- b) by 7.4%, starting 1st December 2012, of the amount granted for the month of November 2012.

The amount of bonuses, indemnities, compensation and other components of the remuneration system which are by law components of gross salary, of gross monthly pay, of monthly gross salary, of compensation for occupations which are granted to personnel paid from public funds are increased by the same percentages and according to the same timetable where the affected personnel carry out its activity in the same conditions.

Important: Partial reversal of pay cuts in the public sector has consequences in the private sector, meaning tax allowed daily allowances paid to an employee on a business trip abroad. We remind that as per Law 118/2010, the amount of a daily allowance for a business trip abroad was reduced by 25% starting 1st July 2010. Starting 1st January 2010, the daily allowance for a business trip abroad increased by 15% as per Law 285/2010.

Starting 1st June 2012, the daily allowance for business trips abroad increases by 8% and it will increase by 7.4% as at 1st December 2012.

As an example: the daily allowance granted to an employee of the public sector on a business trip to Germany was Euro 35 through 30 June 2010. Considering that the daily allowance granted to an employee of the private sector for a business trip is tax allowed up to 2.5 times the amount granted in the public sector, the ceiling for tax deductible daily allowances has changed and will change as follows:

- Euro 87.50 per day through 30 June 2010 (Euro 35 x 2,5)
- Euro 65.63 per day from 1st July 2010 to 31 December 2010 (Euro 35 x 2,5 x 0,75)
- Euro 75.47 per day from 1st January 2011 to 31 May 2012 (Euro 35 x 2,5 x 0,75 x 1,15)

**Recovering pay cuts
in public sector –
consequences on tax
allowed daily
allowance for trips
abroad**



- ☑ Euro 81.50 per day from 1st June 2012 to 30 November 2012 (Euro 35 x 2,5 x 0,75 x 1,15 x 1,08)
- ☑ Euro 87.50 per day starting 1st December 2012 (Euro 35 x 2,5 x 0,75 x 1,15 x 1,08 x 1,074), i.e. the ceiling which prevailed before the budgetary reductions dated July 2010.

ORDER 820 dated 15 May 2012 to set the face value of a luncheon voucher for first half of 2012 (Official Gazette 357/2012)

For first half of 2012, starting May, the face value of a **luncheon voucher remains RON 9**.

We remind that as per provisions of article 55 of Law 571/2003 – Fiscal Code with its further amendments and complements and of point 68 letter a) of Government Decision 44/2004, luncheon vouchers granted as per law are considered salary income and are subject to income tax. In accordance with article 296¹⁵ letter o) of the Fiscal Code, the value of luncheon vouchers are not included in the monthly base for computation of monthly social contributions.

ORDER 821 dated 15 May 2012 to set the indexed monthly amount which may be granted for nursery vouchers for first half of 2012 (Official Gazette 357/2012)

For first half of 2012, starting May, the monthly amount which may be granted in the form of nursery vouchers is RON 400.

As per article 55 of Law 571/2003 – Fiscal Code with its further amendments and complements and of point 68 letter a) of Government Decision 44/2004, nursery vouchers granted as per law are considered salary income and are subject to income tax. In accordance with article 296¹⁵ letter o) of the Fiscal Code, the value of nursery vouchers are not included in the monthly base for computation of monthly social contributions.

EMERGENCY ORDINANCE 17 dated 16 May 2012 to establish refund measures in respect of health contributions (Official Gazette 336/2012)

Amounts withheld from 1st January 2011 to 30 April 2012, representing the difference in net pensions deriving from the application of the percentage of health contributions to the portion of the pension which exceeds RON 740, are refunded as follows:

- ☑ for amounts withheld from January to March 2011, refund is made by equal monthly instalment in the period from June to August 2012;
- ☑ for amounts withheld from April 2011 to April 2012, refund is made by 31 December 2013.

The refund is made ex officio by the National House for Public Pension (CNPP), by local pension houses, by industry pension houses and by houses administering own pension regimes which are not integrated in the public pension regime.

INFORMATION - 30 June 2012, deadline to benefit from 50% reduction in late payment penalties for outstanding fiscal liabilities as at 31 August 2011

We remind that the late payment penalties on outstanding fiscal liabilities as at 31 August 2011 are reduced by 50% if liabilities in principal and related interest are settled by voluntary payment or offsetting on or before 30 June 2012.

In this context, we present the main provisions introduced by Emergency Ordinance 30/2011 and Ministry of Public Finance Order 2604/2011.

Penalties for late payment referred to above represent sanctions for late payment of fiscal liabilities, meaning the amount owed due to non settlement at due date of fiscal liabilities in principal as per provisions of the Code of Fiscal Procedure.

The mentioned fiscal facilities apply to fiscal liabilities administered by ANAF and to fiscal facilities set by other specialised directorates within the Ministry of Public Finance (MFP) and transmitted for collection to ANAF and are granted in function of the nature of the liability by the following authorities:

- ☑ ANAF, by tax authorities under its subordination, for the fiscal liabilities it administers;
- ☑ National Customs Authority by the bodies under its subordination, for the fiscal liabilities it administers;
- ☑ MFP specialised directorates for liabilities they imposed and transmitted to ANAF for collection.

For additional fiscal liabilities on fiscal liabilities in principal which were outstanding as at 31 August 2011, a reduction of 50% of penalties for late payment is granted as well as a reduction by 50% of 50% of the additional late payment liabilities pertaining to these fiscal liabilities in principal if liabilities in principal and related interest as set/administered by each body in charge are settled by payment or offsetting by 30 June 2012.

As for interest due through settlement date and set by a decision communicated after this date, the condition is considered met if interest is settled by due date for payment which is set as per article 111 paragraph 2 of the Code of Fiscal Procedure depending on the communication date of the decision, as follows:

- ☑ if communication is between 1st and 15th of the month, deadline for payment is 5th of the subsequent month;
- ☑ if communication is between 16th and 31st of the month, deadline for payment is 20th of the subsequent month.

Outstanding fiscal liabilities as at 31 August 2011, are defined as:

- ☑ fiscal liabilities which are disclosed on taxpayer returns submitted prior to 31 August 2011 and/or taxation decisions issued and communicated to the taxpayer before this date, for liabilities administered by ANAF;



30 June – deadline for benefiting from fiscal facilities





**Entity greeting a
seconded must
report his/her arrival
to tax authorities**

- fiscal liabilities disclosed in deeds which constitute title to receivable communicated to the taxpayer under 31 August 2011, for fiscal liabilities set by specialised directorates within MFP.

By fiscal liabilities in principal, amounts representing outstanding fines are also included, irrespective of their nature, except for fines for which execution of the administrative act by which the fine is applied is suspended. Fines fall due at the date of communication of the administrative act by which the fine is applicable in case of fines set by tax authorities within ANAF or at the date of receipt of the execution title in case of fines set by other institutions and transmitted to ANAF for execution.

By interest related to liabilities in principal, the percentage of 50% of additional liabilities for late payment is also included, as it represents a component of the interest rate.

Additional liabilities for late payment to which reductions are granted are liabilities due for the period from 1st January 2006 to 30 June 2010.

Fiscal facilities are not granted for fiscal liabilities settled by sequester or for amounts collected upon disposal of sequestered items.

To be granted fiscal facilities, taxpayers must submit an application where they request a statement of outstanding liabilities they intend to settle by payment or offsetting as well as the outstanding liabilities which are eligible for fiscal facilities.

In case the taxpayer settles all its liabilities by payment or offsetting and has not submitted the application to request the statement of outstanding liabilities with tax authorities, the taxpayer will apply to benefit from the fiscal facilities by submitting an application with tax authorities.

Source: DGFP Vâlcea

INFORMATION - Statement 222 – Informative statement regarding inception/termination of activity of individuals who carry out their activity in Romania and who obtain salary income abroad

Any entity in Romania where individuals carry out their activity for which they receive a salary abroad must complete the form, "Informative statement regarding inception/termination of activity of individuals who carry out their activity in Romania and who obtain salary income abroad," code 14.13.01.13/5i.

Obligation

The category of entities which must submit the informative statement include representative offices in Romania of foreign companies, associations, foundations or organisations where headquarters are located abroad as well as international organisations and organisms which operate in Romania.

The statement is completed with 2 original copies:

- the original is submitted to the tax authority office administering the individual or legal entity where the individual carries out his/her activity;
- a copy is kept by the individual or legal entity where the individual carries out his/her activity.

For each individual who obtains salary income abroad for activity carried out in Romania, an informative statement is completed and submitted.

Deadline for submission of form 222

The form is submitted to the appropriate tax authority or sent by registered mail, and, each time events regarding inception/termination of activities supported by documents which rule labour relationship occur, within **15 days** starting date of occurrence of the event.

Legal basis: ANAF President Order 52/2012 to approve model and content of forms set at Title III of Law 571/2003 – Fiscal Code, with its further amendments and complements.

Source: DGFP Vâlcea

INFORMATION – Assessment of the fiscal residence in Romania of individuals

Issues which support fiscal residence in Romania

The main issues which will be taken into account for determination of the fiscal residence of an individual in Romania are the following:

- the domicile in Romania;
- the permanent address in Romania of the individual, lodgings which may be his/her property or rented, but remains at his/her disposal or at his/her family's disposal at all times;
- the centre of vital interest is located in Romania;
- the individual is present in Romania for one or several periods which exceed a total of 183 days during any period of 12 consecutive months which ends in the concerned calendar year.

Assessment of fiscal residence

The non resident individual must submit with tax authorities the form, "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania," within 30 days after occurrence of the 183 days of stay in Romania.

The non resident individual will attach the following to the form:

- copy of passport, in its validity period and, for European Union citizens, copy of passport or national identity card with its validity period;
- certificate of fiscal residence issued by the authority in charge of the State with whom Romania has concluded an agreement to avoid double taxation or another document issued by an authority other than tax authorities with attributions in the field of certification of fiscal residence as per domestic legislation of this State, in original or legalised copy, accompanied by an authorized translation in Romanian, the certificate/document being valid for the year/years for which it is issued;



- documents which prove the existence of lodgings in Romania of the individual, lodgings which may be his/her property or rented, but remains at to his/her disposal or at his/her family's disposal at all times.

Tax authorities will assess whether residence conditions are met in function of the actual position of the individual, taking into consideration provisions of the treaties to avoid double taxation and provisions of the Fiscal Code, if applicable, as well as the file submitted, and will establish whether the non resident individual keeps fiscal residence in the other State as per the treaty to avoid double taxation or will be a fiscal resident in Romania.

Within 30 days starting date of submission of the form, tax authorities will notify the individual whether he/she is subject to full fiscal obligations in Romania or he/she will only be taxed on income obtained in Romania. In case of full fiscal obligations, the resident individual will be subject to income tax upon income irrespective of its source he/she obtains in Romania and outside Romania.

If applicable, in respect of the file submitted by the individual for assessment of his/her fiscal residence in Romania, if modifications occur vs. data disclosed in the notification issued by tax authorities, a new notification will be issued to cancel the former and to correct the fiscal obligations laying with the individual in Romania considering new information provided.

Assessment of fiscal residence upon departure of individuals from Romania

In the scope of deregistering or maintaining evidence with tax authorities, the resident individual in Romania and the non resident individual, must submit the "Questionnaire to determine fiscal residence of individuals upon departure from Romania" 30 days prior to his/her departure from Romania with tax authorities where the "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" was submitted, if the person has not communicated his/her change of domicile/permanent address.

Tax authorities will assess whether residence conditions are met in function of the actual position of the individual, taking into consideration provisions of the treaties to avoid double taxation and provisions of the Fiscal Code, if applicable, as well as the file submitted and any other document which may support assessment of the individual's fiscal residence as well as the certificate of fiscal residence issued by the authority in charge of the State with whom Romania has concluded an agreement to avoid double taxation or another document issued by an authority other than tax authorities with attributions in the field of certification of fiscal residence, and will establish whether the resident individual in Romania keeps his/her fiscal residence in Romania as per treaty to avoid double taxation and provisions of the Fiscal Code or will be not a fiscal resident in Romania.

Within 15 days starting date of submission of the form, tax authorities will notify the individual whether he/she continues to be fully subject to Romanian fiscal obligations or whether he/she will be deregistered or maintained in tax authorities' evidence. In case of full fiscal obligations, the resident individual continues to be subject to income tax upon income irrespective of its source he/she obtains in Romania and outside Romania.

If further to submission of the form, the individual resident in Romania, with his/her domicile in Romania, provides the proof of his/her change of residence in a State with whom Romania has concluded a treaty to avoid double taxation, he/she will attach to the above mentioned form the certificate of fiscal residence issued by the authority in charge of the State which considers him/her a fiscal resident or another document issued by an authority other than tax authorities with attributions in the field of certification of fiscal residence in order to apply provisions of the treaty. The individual resident in Romania, with his/her domicile in Romania, will continue to be considered resident in Romania, having in Romania full fiscal obligations through the end of the calendar year when he/she provided proof of change of fiscal residence in another State with whom Romania has concluded a treaty to avoid double taxation.

The individual resident in Romania, with his/her domicile in Romania who departs to a State with which Romania has not concluded a treaty to avoid double taxation completes the form, "Questionnaire to determine the fiscal residence of individuals upon departure from Romania" and continues to be subject to income tax upon income irrespective of its source in Romania and abroad for the calendar year, the individual departs from Romania as well as for the next 3 calendar years.

The non resident individual who had to complete the form "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" and has obtained tax residence in Romania for a period of stay in Romania will only complete the form, "Questionnaire to determine the fiscal residence of individuals upon departure from Romania," upon departure from Romania, and will not consider this proof of his/her change of fiscal residence in another State. This individual will be considered a fiscal resident in Romania until the end of the calendar year when he/she departs from Romania also having for this year full fiscal obligations in Romania.

A non resident individual who, during his/her stay in Romania, has proved he/she is tax resident in a State with which Romania has concluded a treaty to avoid double taxation and who had the obligation to complete the form, "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" will complete the form "Questionnaire to determine the fiscal residence of individuals upon departure from Romania," upon departure from Romania.

Forms

As a summary, forms used for assessment of fiscal residence are the following:

1. "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania." This form is completed by individuals who arrive in Romania or who stay in Romania for one or several periods where the total length of time exceeds 183 days during any period of 12 consecutive months which ends in the calendar year. Completion of this form is not mandatory for foreigners with a diplomatic or consular sta-



**To be or not to be
fiscal resident?
This is the question!**



tus in Romania, foreigners who are civil servants or employed by an international and intergovernmental organism registered in Romania, foreigners who are civil servants or employed by a foreign State in Romania, or their family members in compliance with general regulations of international law or provisions of special agreements to which Romania is part.

2. "Questionnaire to determine the fiscal residence of individuals upon departure from Romania." This form is completed by resident individuals in Romania and by non resident individuals who were required to complete the above mentioned questionnaire when they leave Romania and will stay abroad for over 183 days within a calendar year. Filling this form is not mandatory for Romanian citizens who work abroad as civil servant or employed of the Romanian State abroad.

3. "Notification regarding meeting conditions for fiscal residence as per the provisions of articles 7 and 40 paragraph (2)-(6) of Law 571/2003 – Fiscal Code, with its further amendments and complements or the Treaty to avoid double taxation concluded between Romania andfor individuals upon arrival in Romania and who stay more than 183 days."

4. " Notification regarding meeting conditions for fiscal residence as per the provisions of articles 7 and 40 paragraph (2)-(7) of Law 571/2003 – Fiscal Code, with its further amendments and complements or the Treaty to avoid double taxation concluded between Romania andfor individuals upon departure from Romania and who stay abroad more than 183 days."

Submission of forms

Forms are submitted in paper format to the local tax authority office or sent by registered mail.

During 2012, individuals who arrived in Romania after 1st January 2009 and continue to be present in Romania after 1st January 2012 must complete the "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania."

Non resident individuals arriving in Romania before 1st January 2009 and who apply for issuance of the "Certificate of fiscal residence to apply the treaty to avoid double taxation concluded by Romania andfor resident individuals in Romania" must complete the "Questionnaire to determine the fiscal residence of individuals upon arrival in Romania" and must provide proof of payment of income tax for income obtained, whatever its source, in Romania as well as abroad for the categories of income subject to taxation in Romania.

Legal basis: MFP Order 74/2012 to rule issues regarding fiscal residence of individuals in Romania, published at Official Gazette 73 dated 30 January 2012.

Source: DGFP Vâlcea

INFORMATION – Trade Register – Company features, as per article 237 of Law 31/1990

Regarding information published by the Trade Register, checking the following company features is recommended:

- period the title to the registered address is valid;
- duration of the mandate of the Director;
- duration of the mandate of the "cenzori;"
- annual financial statements filed.

The above mentioned information may be checked online <http://www.onrc.ro/romana/semnal.php>

If the company is in compliance, it does not appear on the list.

We emphasize that such concerns disclosed by the Trade Register may lead to rejection of the taxpayer application to register for submitting tax returns online because a public servant with the tax authorities checks taxpayer status by entering into this website address.

REMINDER – Valuation of monetary items in foreign currency

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

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

Exchange rates to use for valuation at the end of May 2012:

1 EUR = 4.4652 RON; 1 USD = 3.5939 RON; 1 CHF = 3.7159 RON; 1 GBP = 5.5787 RON.

JUNE 2012 – AGENDA

Every day - do not forget

- To complete the petty cash register (or print electronic version)
- To complete the purchase ledger and sales ledger
- To update electronic employee registers with information regarding labour contract inception/ amendment or termination, if any

At month end - do not forget

- To complete the journal ledger
- To register contracts concluded during the month for services rendered by non residents with tax authorities as per article 8 point 7¹ of the Fiscal Code. In case a written contract is not concluded, documents which support the actual provision of services in Romania (statements of work, commissioning minutes, activity reports, feasibility studies, market studies, any other supporting document are registered 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



Checking compliance
on Trade Register
website



- 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 June 2012

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 4 June is a legal holiday, Pentecost Monday

That Friday 8 June is the last day to submit

- Form 092 (*amendments*) to change VAT return periods from Quarterly to Monthly in case an EU acquisition of goods occurred in May 2012. Starting June 2012, VAT returns shall be submitted monthly.

That Monday 11 June is the last day to submit

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

That Monday 11 June is the last day to pay

- Hotel tax
- Advertising service tax

That Friday 15 June is the last day to submit

- INTRASTAT statement for May 2012 (standard or extended submitted on-line)
- Statements of acquisitions and supplies in the field of energy in May 2012.

That Friday 15 June is the last day to pay

- Tax on billboard advertising (2nd instalment)
- Income tax (advance payment) regarding Quarter II 2012 for taxpayers who obtain income from independent activities, rental revenue and agricultural revenue (as per article 71 of the Fiscal Code).

That Monday 25 June is the last day to submit

- State budget liability return (form 100)*
- Return regarding social contributions, income tax and nominative list of insured persons (form 112)*
- VAT return (form 300)*
- Special VAT return for VAT non payers (form 301)*
- Statement regarding amounts deriving from VAT adjustments (form 307)
- VAT return regarding VAT due by taxable entities which registration code under the scope of VAT was cancelled as per article 153 point (9) letters a)-e) of the Fiscal Code (form 311)
- Recapitulative statement of EU Supply/acquisitions/services (form 390)* for May 2012
- Informative Statement on domestic supply/services rendered and acquisitions regarding May 2012 (form 394)*
- Statement of salary income obtained from abroad by individuals who carry out activity in Romania and by Romanian citizens who are employees of diplomatic missions and consular posts accredited in Romania (form 224)
- Environment Fund Statement (excluding "ecotax").

That Monday 25 June is the last day to pay

- Excise taxes
- VAT
- Liabilities to the sole bank account – **State Budget**
 - o Tax on crude oil and natural gas from domestic production
 - o Withholding tax on non-resident income
 - o Income tax on salary (*separate bank transfer for headquarters and each secondary establishment*)
 - o Tax on income from independent activities, withheld at source
 - o Tax on dividends paid in May 2012
 - o Tax on interest income
 - o Tax on investment income
 - o Tax on pension income
 - o Tax on income from prizes and gambling



**Do not forget
submission and
payment deadlines!**



- Tax on income from other sources
- Contribution for non employment of disabled persons for employers with headcount over 50
- ☑ Liabilities to the sole account – Public Insurance Budget and special funds
 - Social security contribution (*pension*)
 - Health insurance contribution
 - Medical leave contribution and health insurance allowance
 - Unemployment contribution
 - Contribution to fund to guarantee payment of salary liabilities
 - Contribution to work accident and occupational disease fund
- ☑ Contribution to Environment Fund ("ecotax" excluded)
- ☑ Tax on Representative Office (1st instalment – 50% of the lump sum tax of Euro 4,000)
- ☑ Annual license tax for gambling, with respect to Quarter III 2012.

**IMPORTANT**

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

Tax returns noted with an asterisk (*) may be submitted by remote means of electronic transmission by large and medium size taxpayers as well as by taxpayers which have opted to file their returns on-line and which hold a digital certificate.



KEY HR FIGURES

| 2012 Contributions | Employer and Beneficiary of activities considered dependent activities (% rate) | Employee and provider of dependent activities (% rate) |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Social security contribution (<i>pension</i>) | 20.8% for normal working conditions 25.8% for particular working conditions 30.8% for special working conditions (contribution base capped at an amount representing the average amount of insured persons during the month for which the contribution is determined as 5 times the average monthly gross salary) ¹ | 10.5% (contribution base per employee capped at 5 average monthly gross salaries according to Budget for public social insurance, i.e. 5 x 2,117 = RON 10,585) ¹ (contribution base for a person under civil contract: gross income) |
| Health insurance fund (based on gross salary) | 5.2% | 5.5% |
| Medical leave contribution and health insurance allowance (based on gross salary) | 0.85% | |
| Unemployment fund (based on gross salary) | 0.5% | 0.5% |
| Work accident and occupational disease fund (based on gross salary) ² | 0.15% - 0.85% depending on CAEN code for main activity | |
| Contribution to fund to guarantee payment of salary liabilities (based on gross salary) | 0.25% (only for employees under labour contract included for retired persons) | |
| Salary tax | | 16% |
| Contribution for non employment of disabled persons (for employers with more than 50 employees) | 4 x 50% minimum gross salary (RON 700) for every 100 employees | |
| Minimum monthly gross salary as per Government Decision 1225/2011 | RON 700 | |
| Luncheon voucher - employee subject to salary starting March 2011 | RON 9 | |
| Per diem (in Romania) Employees in the public sector Employees in the private sector (x 2.5) | RON 13.00 RON 32.50 | |

Note 1: Contribution to pension is also due during periods when the insured person benefits from medical leave and health insurance allowances. For these periods, the contribution base is 35% of the average monthly gross salary corresponding to the number of business days of medical leave.

Note 2: Contribution for work accident and occupational disease is also due during periods when the insured person benefits from medical leave and health insurance allowances. For these periods, the contribution base is the minimum gross salary where payment is guaranteed on a national basis corresponding to the number of business days of medical leave.

Note 3: Income paid to a person who carried out an activity considered dependent activity (example: in-house "captive" PFA or who meets at least 1 out of the 4 re-qualification criteria mentioned in OUG 82/2010) is disclosed on a separate "Payment statement" and is included on form 112.

| Contributions | Income payer / Beneficiary of professional activities (of author or person under civil contract) (% rate) | Provider of professional activities (author or person under civil contract) (% rate) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Contribution to social insurance (<i>if applicable</i>) (based on gross income reduced by the standard deduction as deemed expenses for intellectual property rights and based on gross income for persons under civil contract and in both cases capped at 5 average monthly gross salaries, i.e. 5 X 2,117 RON) | 0% | 10.5% ¹ |
| Contribution to health insurance | 0% | 0% ² |
| Contribution to unemployment insurance (<i>if applicable</i>) | 0% | 0.5% ³ |
| Income tax | | 16% ⁴ |

¹ The income payer calculates, withholds, pays and declares the individual contribution for pension (CAS) if the author or person under civil contract does not prove he/she is retired or insured in another pension regime.

² The author or person under civil contract remains responsible for submitting his/her return for health insurance as well as payment of the health contribution as per Law 95/2006.

³ The income payer withholds pays and declares the individual contribution for unemployment if the author or the person under civil contract does not prove he/she is insured by option with the unemployment insurance regime.

⁴ Regarding income tax, it remains possible for the author to have 10% of his/her income tax withheld when author's rights are paid, to annually declare author's rights income obtained to tax authorities and to adjust the 10% income tax rate to 16%, paying the balance due.

Romania, Bucharest
Blvd Dacia 56, District 2

Phone: + 40 (0) 31 809 2739
Phone: + 40 (0) 74 520 2739
Fax: + 40 (0) 31 805 7739
E-mail: office@apex-team.ro

Our Mission:
Adding Value to Client's Business

www.apex-team.ro

APEX Team includes qualified professionals able to provide a full range of accounting and payroll services. Our consultants are ready to share their knowledge and experience gained whilst working in Romania as consultants for one of the Big 4 international companies, having many international companies acting in a wide range of industries as clients.

The team includes chartered accountants (Romanian Chartered Accountants Body and also ACCA) specialised in accounting for business entities, as well as a group specialised in payroll administration on behalf of the client.

APEX Team provides a full range of accounting services, payroll services, local tax compliance and tax advice, as well as services tailored to your company needs:

- Bookkeeping
- Recurring accounting assistance
- Payroll computation and additional HR services
- Accounting and tax advice « on line »
- Consulting and assistance in drafting transfer price files
- Start up services
- Organization of the accounting function
- Assistance in implementation of ERP
- Training