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DECISION 670 dated 4 July 2012 to amend and complement Implementation Norms of Law 571/2003 – Fiscal Code, approved by Government Decision 44/2004 (Official Gazette 481/2012)

The Decision introduces amendments to Implementation Norms of the Fiscal Code, out of which the main points are presented hereinafter.

PROFIT TAX

Allowed expenses

Losses from clients receivables which are recorded further to implementation of a reorganisation plan accepted and confirmed by a judicial decision as per provisions of the law regarding insolvency procedures are also allowed expenses.

Limitation to the deduction of expenses pertaining to motor vehicles

The justification of the use of a vehicle, under the scope to be granted full deduction of the expenses upon determination of taxable profit, is backed up by supporting documents and by completing the automobile log book which must disclose the following minimum information: category of vehicle used, reason and destination, mileage driven and standard petrol consumption for the vehicle.

Within expenses pertaining to automobiles subject to fiscal limitations, expenses directly attributable to the vehicle are evaluated, including expenses derived from a lease contract in progress, such as:

- local taxes;
- mandatory civil liability car insurance;
- periodic technical check;
- road tax, rental fees;
- non deductible part of VAT;
- interest;
- commissions;
- foreign exchange losses, etc.

Application of the 50% limit to set the disallowed amounts upon determination of taxable profit is made **after application of limits regarding VAT, meaning that this limitation to deductibility also applies to VAT for which the VAT deduction right was not granted.**

Example 1 - Determination of disallowed amounts of repair and maintenance expenses regarding a vehicle which is not exclusively used for economic activities

- repair and maintenance expenses – RON 2,000
- non deductible portion of VAT – RON 240 (2,000 x 24% x 50%)
- basis for disallowed repair and maintenance expenses – RON 2,240 (2,000 + 240)
- repair and maintenance expenses allowed – 2,240 x 50% = RON 1,120
- VAT deducted – RON 240 (2,000 x 24% x 50%)
- Amount of allowed expenses: RON 1,120.

Example 2 - Determination of disallowed expenses in respect of petrol for a vehicle which is not exclusively used for economic activities

- petrol expenses – RON 1,000
- non deductible portion of VAT – RON 120 (50% x 24% x RON 1,000)
- basis for disallowed petrol expenses – RON 1,120 (1,000 + 120)
- disallowed petrol expenses – 1,120 x 50% = RON 560
- allowed expenses are RON 560 and VAT of RON 120 is deductible.

It can be observed that in comparison to the limitation mechanism applied in practice after 1st January 2012, when the portion of 50% of VAT was considered a disallowed expense, as per clarification provided by the present Norms, half of VAT which deductibility was not granted is also included in the allowed expenses upon calculation of profit tax.

Provisions and reserves

Clarifications have been made in relation to the concept of “credit institutions” from which receivables are assumed for the purpose of recovery, for the application of article 22, paragraph (1), letter m) of the Fiscal Code introduced by Government Ordinance 24/2012. The Ordinance also clarified the condition that receivables be previously included in the taxable income of the assignee, which is considered fulfilled if the assignee records the difference between the value of the receivable transferred and

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the amount to pay to the assignor as income.

The Decision clarifies the treatment of credit risk filters recorded by credit institutions according to the regulations issued by the National Bank of Romania. Hence, the deduction to be taken for the purposes of calculating taxable profit is represented by the difference between the value of the opening balance of the credit risk filters calculated as at 1st January 2012 in relation to the assets existing as at 31 December 2011 and the value of amounts recorded as at 1st January 2012 in the credit balance of account 58171 "Retained earnings from specific provisions" in relation to the assets existing as at 31 December 2011. The Decision also states that the reduction or cancellation of the credit risk filters which have been deducted for corporate income tax purposes is taxable in the reverse order when they were recorded.

TAX ON INCOME OBTAINED BY NON RESIDENTS

References to the quarterly tax return submitted by non resident beneficiary of gains have been removed from the Norms, in the case of non resident individuals who obtain income from the transfer of securities (other than shares in limited liability companies and securities in the case of closed companies) and in the case of transfer of any securities owned by a non resident individual through an intermediary. Only references to the (realized) income statement have remained.

The present Norms also state that non resident beneficiaries of income derived from Romania who have custody accounts open at custodian agents, must submit the original tax residence certificate to these custodians, for the purpose of applying provisions of double taxation avoidance conventions or of European Union legislation. The custodian agent must, upon request from the non resident, transmit a notarized copy of the tax residence certificate, together with an authorized translation into Romanian, to each individual or legal entity which has made payments to the beneficiary of non resident income.

INCOME TAX

Allowed expenses upon determination of annual net income derived from independent activities

As per the present Decision, the Fiscal Code provision mentioning that 50% of expenses related to motor vehicles are considered deductible expenses when determining net annual income derived from independent activities, will apply to all expenses directly attributable to each vehicle, including those representing local taxes, mandatory civil liability car insurance, periodic technical inspections, road tax, etc. Full deductibility (for some of the vehicles specifically mentioned in the Fiscal Code) is allowed only on the basis of supporting documents and a completed automobile log book.

Gains on disposal of securities other than shares and securities in the case of closed companies

The Decision aligns the provisions of the Norms to those of the Fiscal Code by introducing a new point which eliminates the obligation to determine and declare quarterly net gains/ quarterly net losses from disposal of securities other than shares and securities held in closed companies.

MANDATORY SOCIAL CONTRIBUTIONS

Contribution to fund to guarantee payment of salary liabilities

The Decision clarifies that the contribution base to fund the guaranteed payment of salary liabilities includes any benefit in cash as well as:

- Any benefit in kind received from the employer;
- Health insurance allowances only for the first 5 days of sick leave supported by the employer.
- Allowances for temporary disability caused by a work accident or an occupational disease for only the first 3 days of sick leave supported by the employer.

Pension income

The Decision clarifies a contradiction which existed between the Fiscal Code and Norms in relation to the payment of health insurance contributions on income from pensions. The Decision states that health insurance contributions on income from pensions is only due on income which exceeds RON 740 per month, thereby confirming that the interpretation in the Fiscal Code is correct. (Previously, the Norms stated that pensioners whose pension income exceeded 740 RON were subject to health insurance contributions on their entire retirement income).

Return regarding social contributions, income tax and nominative list of insured persons (form 112)

As per the Decision, this return must be submitted by individuals, whether Romanian residents or non residents, deriving salary or income assimilated to salary from employers based in countries with which Romania has not concluded social security treaties or agreements as well as Romanian nationals employed by foreign diplomatic missions and accredited consular missions in Romania.

Contribution base for social insurance (CAS - Pension)

Individuals deriving income from independent activities must declare their income at any chosen level between 35% of average gross salary used for the preparation of the Budget of public social insurance and the equivalent of 5 times average gross salary.

As per the present Decision, assessment whether an individual must pay a contribution to social insurance is made depending on:

- taxable income derived in the previous year, calculated pro-rata in accordance with the number of months of activity, for individuals taxed based on their net real income.
- estimated income to be obtained, for individuals starting their activity during the fiscal year.
- monthly value of income quota, obtained by dividing the annual income quota by 12 months, for individuals who carried out an activity which is taxed based on income quota.



Retired individuals subject to health contribution only on portion over RON 740

The image shows a portion of the Romanian Form 112, titled 'DECLARAȚIE PRIVIND OBLIGAȚIILE DE PLATA A CONTRIBUȚIILOR SOCIALE ȘI IMPOZITULUI PENTRU PERVENIȚA NOMINALĂ A PERSOANELOR ASIGURATE'. It includes fields for personal information, identification numbers, and sections for declaring income and social contributions. A 'VALIDARE' (Validation) stamp is visible at the bottom.

Individuals taxed based on their net real income that have derived income below the minimum cap set by law, are not subject to social insurance contributions (*pension*) in the following year. Social insurance contributions paid during the year when the individual has derived income below the minimum cap are not refunded and these are taken into consideration upon calculation of the contribution period and the retirement score.

VAT

The present Implementation Norms provide several important clarifications in respect of VAT deduction and the limitation to the deduction right for road vehicles with a total weight of up to 3,500 kg and up to 9 seats, the driver's seat included.

Expense pertaining to vehicles that the taxable person owns or uses is defined as any expenses directly attributable to the vehicle, such as repair and maintenance, lubricants, spare parts and petrol/fuel used by the vehicle. Any expense which cannot be directly attributed to a certain vehicle is not deemed to represent an expense pertaining to vehicles the taxable person owns or uses.

In the case of a vehicle which is **exclusively** used for performance of economic activities in the sense of article 145¹ paragraph (1) of the fiscal Code, VAT on purchase, EU acquisition, import, rental or lease and VAT on expenses pertaining to this vehicle is deductible in accordance with general provisions set at articles 145 and 146-147¹ of the Fiscal Code, the 50% limitation not being applicable.

Use for performance of economic activities of a vehicle includes, but is not exhaustive: travelling in Romania or abroad to visit clients/suppliers for market prospects, travelling to locations where secondary establishments are, to the bank, to customs offices, to post offices, to tax authorities, use of the vehicle by management in the performance of their professional duties, travelling for servicing, maintenance, repairs and use of test-drive vehicles by car dealers. The obligation lays with the taxable entity to demonstrate that all legal conditions for being granted a deduction are met as it also results from the Decision of the European Court of Justice in Case C-268/83 D A. Rompelman and E.A. Rompelman - Van Deelen against Minister van Financiën. In the scope of exercising the VAT deduction right, any taxable entity must hold the documents set by law for VAT deduction and must complete an automobile log book which must disclose the following minimum information: category of vehicle used, reason and destination, mileage and standard petrol consumption of the vehicle.

In the case of vehicles used for the transport of employees to/from work, such vehicles are considered used for the performance of economic activities when there are obvious difficulties in using other adequate means of transport in common, such as the lack of transport in common, common means of transport time tables not adequate for the business hours of the taxable entity. Vehicles used for transport of employees from their residence/agreed upon location to/from the work are also considered vehicles used by the employer. Employee is defined as employees, directors of commercial companies, managers who carry out his/her activity under a management contract as per law as well as resident and/or non resident individuals who are secondees as per law, in the case where the taxable entity supports legal obligations secondees are entitled to.

Operation of a vehicle by employees of a taxable entity for their own use or making it available free of charge to other persons for reasons other than performance of its economic activities is hereinafter named personal use. Transport of employees to/from work in other conditions than those mentioned above is deemed personal use of the vehicle. It is considered that a vehicle is not exclusively used for performance of economic activities in the case where, in addition to use for economic activities, the vehicle is also occasionally or continuously used for personal use.

If the vehicle is used for both performance of economic activities and personal use, the VAT deduction right is capped at 50%.

The taxable entity which applies limited deduction at 50% need not keep the automobile log book for use of a vehicle for both performance of economic activities and personal use.

We remind that as per provisions of article 145¹ paragraph (3) of the Fiscal Code, the 50% limitation of VAT deductibility does not apply to the following categories of vehicles:

- vehicles used exclusively for emergency services, guard and protection services and mail services;
- vehicles used by sales and procurement agents;
- vehicles used for the transport of persons for a fee, including taxis;
- vehicles used for providing services for a fee, including rental to other persons or driver's education vehicles;
- vehicles used in rental operations or vehicles where use is granted according to a financial or operating lease;
- vehicles used for commercial purposes.

The Implementation Norms state that VAT pertaining to vehicles used in categories b) - f) mentioned above is deductible in accordance with general provisions, the 50% VAT deduction not being applicable.

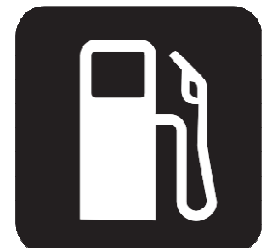
The **use of such vehicles for only personal is considered negligible** except in circumstances when abusive practices can be demonstrated. In the case set per letter a) above, it is mandatory that the taxable entity **exclusively** uses the vehicle for emergency services, guard and protection services and mail services in the perspective of being able to deduct VAT. However, in these cases, the limitation of the VAT deduction right does not apply if these vehicles also are used for other economic activities of the taxable entity, including activities listed in letters b) – f) above.

The Implementation Norms also provide clarification in respect of terminology:

- exclusive vehicles:
 - for emergency services, it is meant vehicles, whether or not equipped with specific technical equipment to be used by specialised staff for the purpose of emergency servicing of gas, electricity, wa-



**Automobile log book
not mandatory if VAT
deduction capped at
50%**





- ter and waste water networks;
- o for guard and protection services, it is meant vehicles used to ensure security of the guarded location, of goods and valuables against any illicit action which jeopardizes the right of ownership, as well as to protect individuals against any hostile act which attack life, physical integrity or health as per provisions of Law 333/2003 regarding protection of locations, items, valuables and persons, with its further amendments and complements;
 - o for mail services, it is meant vehicles which are used for reception, transport and distribution of letters and parcels;
- b) vehicles used by sales agents represent vehicles used within activities of a taxable entity by its employees who are mainly in charge of market prospecting, merchandising, negotiation of sale conditions, sales of goods/services, after sale activities and client monitoring. The exercise of the right of deduction in accordance with provisions of article 145¹ paragraph (3) letter b) of the Fiscal Code is limited to 1 vehicle for each sales agent at most;
- c) vehicles used by procurement agents represent vehicles used within activities of a taxable person by its employees who are mainly in charge of negotiation and conclusion of contracts of acquisition of goods and services, of updating data base of potential and existing suppliers, of drafting administrative procurement documents, of study of requests for procurement and of proposing the best offer, tracking suppliers performance to achieve the targets of quality, cost, deadlines. The exercise of the right of deduction in accordance with the provisions of article 145¹ paragraph (3) letter b) of the Fiscal Code is limited at a vehicle used by each procurement agent at a most;
- d) vehicles used for the transport of persons for a fee represent vehicles which significantly contribute to direct rendering of services for a fee without which services could not be rendered.

Use of vehicle for activities which are the object of exceptions (above mentioned letters a-f) results, as per case, from information such as the object of activity of the taxable entity, proof that the taxable entity has qualified employees for the fields of activity set as exceptions, maintenance of automobile log books or any other evidence which could be provided.

LOCAL TAXES

For buildings owned by credit institutions which apply International Financial Reporting Standards (IFRS) and choose revaluation method for measurement subsequent to initial recognition, the taxable value is the value stated in a valuation report issued by an authorized evaluator and submitted to local tax authorities.

In the case of buildings that have undergone reconstruction, consolidation, modernization or extension by the tenant, the law provides that the tenant is not required to report the value of work carried out to the landlord if their value does not exceed 25% of the building value. Nevertheless, if during the fiscal year, a lot of construction projects are carried out, each having an individual value below 25%, but cumulatively exceeding 25% of the building value, the tenant is required to report the aggregate value of the work to the landlord.

Clarifications have been provided regarding the tax payment deadline for buildings acquired during September and October of a fiscal year, through modifications to the relevant calculation examples in the Norms.

Vehicles of up to 12 tons which are built for the transportation of both passengers and goods are now assimilated to "other vehicles [...]", for which the tax amount is RON 30 for each 200 cm³ section, as per article 263, paragraph (2) of the Fiscal Code. Subsequently, local tax has been reduced for these types of vehicles. Previously, the applicable tax was RON 144 per 200 cm³: these types of vehicles being assimilated to "vehicles with cylinder capacity between 2601 cm³ and 3000 cm³ inclusive."

Clarification is provided regarding application of the tax on means of transport for vehicle taxes which are recorded as means of transportation, i.e. vehicles for which licensing ("inmatriculare") is not required, as follows:

- If the means of transport does not have the characteristics of a vehicle, it is not subject to tax on means of transport, being assimilated to machinery;
- If the means of transport is designed with wheels and axles, it is taxed as per general provisions applicable to means of transport (if not self-propelled, it is considered a trailer);
- In cases where above-mentioned vehicles (except for those which are not self propelled) have no identity card, local taxes set at article 283 of Fiscal Code are due (tax established by local councils for ownership or use of equipment and machinery aimed at obtaining income which use the local public infrastructure, or tax for activities with an impact on the environment).

The Decision clarifies that the declared project value for the purpose of determining tax upon issue of building permits, does not include VAT.

The fact that entertainment tax is determined on collected value and VAT is excluded from the sale of season and entry tickets is also clarified.

ORDER 84 dated 27 June 2012 to approve Instructions 3/2012 to amend Instructions 5/2006 regarding half year accounting report of entities licensed, regulated and monitored by National Securities Commission - CNVM (Office Gazette 448/2012)

ORDER 6 dated 4 July 2012 to amend and complement methodological Norms for preparation of consolidated financial statements in accordance with IFRS to be prepared by credit institutions in the scope of monitoring risk, approved by the National Bank of Romanian (BNR) Order 1/2011 (Official Gazette 474/2012)

Useful clarification regarding types of vehicles not subject to limitation of VAT deduction



ORDER 9 dated 4 July 2012 to amend BNR Order 25/2011 regarding reporting statements in respect of application of BNR Regulation 11/2011 regarding scoring loans and deposits as well as in respect of determination and use of risk-adjusted valuations during the period from 1st January 2012 to 31 December 2012 (Official Gazette 470/2012)

LAW 148 dated 23 July 2012 regarding recording commercial operations by electronic means (Official Gazette 509/2012)

The Law sets the legal regime of documents in electronic form which contain data regarding economic operations of exchange or sale of goods or services between entities which issue and receive invoices, fiscal vouchers or receipts in electronic form.

Invoices, fiscal vouchers and receipts in electronic form represent supporting documents in the sense of Accountancy Law 82/1991.

Issue of invoices in electronic form represents the operation of preparing, electronically signing and time stamping of invoices in electronic form for the purpose of archiving in electronic form, irrespective of their transmission in electronic form or in paper format.

The invoice in electronic form represents the document which characterizes in a sole and unequivocal manner the exchange or sale of goods or services, signed with an electronic signature and bearing time stamping and which includes data in the format of invoices and which is issued and administrated using IT applications.

The fiscal voucher in electronic form represents the financial and fiscal document which meets all mandatory conditions as per legal provisions in force regarding its content, issued by electronic marking equipment for and which contains data recorded by means compatible with automatic data processing, signed with an electronic signature and bearing time stamping.

Receipt in electronic form represents the financial and fiscal document which meets all mandatory conditions as per legal provisions in force regarding its content and its format, recorded by means compatible with automatic data processing, signed with an electronic signature and bearing time stamping.

Invoice in electronic form

The individual or the legal entity which issues invoices may opt to issue invoices in electronic form provided that authenticity, origin and integrity of the content are guaranteed. Issue of invoices by an individual or legal entity is carried out as selected by the sole issuer in one of the two following modalities: in electronic form or paper format. The person who issues the invoice may opt to change the modalities to issue invoices and will inform the Ministry of Finance (MFP) in this respect. The invoice in electronic form must respect the content set by special text of law and will contain time stamping which certifies the moment of issue as well as the electronic signature of the person which issues the invoice. The certificate regarding the electronic signature of the person who issues the invoice in electronic form will include information regarding fiscal identification and the number of the notification registered with MFP. The transmission of invoices issued in electronic form is made as per one of the two following modalities: by electronic means under the conditions set at the Fiscal Code or in paper format.

Conditions to be met by entities which issue invoices in electronic form

The person who issues invoices in electronic form must meet the following conditions:

- to have adequate technical and human resources to guarantee security, reliability and continuity in processing of data in electronic form;
- to use staff with knowledge in the field of electronic signature technology and with sufficient experience regarding related security procedures;
- to be managed and to archive full information on each invoice issued in electronic form for the length of time set by the legal provisions in force;
- to use electronic archiving systems in conformity with provisions of Law 135/2007 regarding archiving documents in electronic form. During the archive process, persons in charge of archiving will take measures to ensure that any invoice issued in electronic form can only be accessed by the person who issued it, its beneficiary or the bodies empowered by law.

Outsourcing services to issue, transmission and archive invoices in electronic form

Activities of issue, transmission of invoices in electronic form as well as archiving invoices in electronic form can be carried out by other persons that the person who legally issues the invoice in electronic form provided that:

- the above mentioned conditions are met;
- a contract has been duly concluded between the entity which legally issues the invoice in electronic format and the service provider of issuing invoices in electronic form.

The certificate regarding electronic signature of the provider of services of issue, transmission or archiving invoices in electronic form will contain its quality of service provider and its identification data. Outsourced service providers which issue invoices in electronic format can render conversion services for invoices already issued in paper format into electronic form at the beneficiary request.

Conversion can be performed only starting from the invoice in original. The invoice in electronic form only acquires the quality of supporting document only after inscription of the following notation: "the present invoice conforms to the original initially issued in paper format with series and number dated, issued by" and by enclosing the electronic signature of the service provider of issue of invoices in electronic form as well as time stamping certifying the moment of the conversion both in case of individual invoices and in case where conversion is made for a batch or lot of invoices.



An invoice in electronic form is a supporting accounting document



Receipt in electronic form

The receipt in electronic form respects the conditions regarding mandatory content set by legal provisions in force and contains time stamping as well as the electronic signature of the person who issues the receipt.

Regime of documents in electronic form regarding transactions recorded by the intermediary of cash tellers and ATMs

Fiscal vouchers and vouchers issued by bank terminals hereinafter referred to as ATMs as well as cash tellers, in electronic form, stocked by the entity which issues them have the same legal regime as those issued in paper format.

Entities which must issue vouchers by the intermediary of a cash teller or ATM can store the electronically generated document in electronic form in the following conditions:

- a) conditions are met in respect of assurance of the conformity of information recorded in electronic form with information disclosed in the paper document;
- b) vouchers are archived and access to issued vouchers is ensured.

Vouchers issued in electronic form by cash tellers and ATMs and stored by the issuing entity respect the conditions regarding mandatory content set by legal provisions in force.

Entities which keep the vouchers issued by cash tellers and ATMs in electronic form must notify the fiscal body in charge within ANAF.

Expenses recorded by entities which issue, transmit or archive invoices, receipts and fiscal vouchers in electronic form, investments in equipment and other captions necessary to carry out these activities are depreciated over 5 years starting from the first recorded date of adopting invoices in electronic form.

Expenses incurred by entities which issue invoices, receipts and fiscal voucher in electronic form which represent investment for modification and upgrade of IT systems used in the activities of electronic invoicing are depreciated for a duration of 3 years starting inception of the investment, supported by a resolution of the Director or Board of Directors of the entity which undertakes the investment and by a statement under own responsibility if the investment is undertaken by an individual.

LAW 147 dated 23 July 2012 to amend article 139 point (1) of Law 53/2003 – Labour Code (Official Gazette 509/2012)

The Law updates legal holidays, adding 30 November, St. Andrew's Day. Thus, legal holidays become:

- 1st January and 2 January;
- Easter and Easter Monday;
- 1st May;
- Pentecost and Pentecost Monday;
- Assumption (15 August);
- 30 November – Saint Andrew, patron of Romania;
- 1st December;
- Christmas and 26 December;
- Two days for each of the 3 annual religious celebrations declared as such by the official religions other than Christian, for their followers.

30 November has become a legal holiday

LAW 126 dated 12 July 2012 to approve OG 29/2011 to amend and complement OG 92/2003 – Code of Fiscal Procedure (Official Gazette 484/2012)

The Laws introduces the following amendment to the Code of Fiscal Procedure: the fiscal certificate is issued by the tax body in charge within local public authorities upon request of the taxpayer or the notary, namely their representative as per power of attorney.

The fiscal certificate is issued within 2 business days at most after application and can be used by the taxpayer during the full month of its issue. During the period of validity, the certificate can be presented by the taxpayer in original or legalised copy to any person who requests it.

INFORMATION – Criminal record for legal entities

Starting 1st August 2012, the Bucharest main police station is no longer in charge of issuing certificate regarding criminal records for legal entities. Such a certificate is necessary for applying for registration in the EU Operators Registry (ROI).

To obtain a certificate regarding criminal records for a legal entity, its legal representative or his/her empowered person will now apply at the police station in charge depending on the district where the company or branch is located:

Registered address of the company or branch	Police station
District 1	Station 1
District 2	Station 8
District 3	Station 12
District 4	Station 14
District 5	Station 17
District 6	Station 21



The same applies to non resident legal entities. This is the case, for instance, when a non resident legal entity is a shareholder of a Romanian entity or when it has opened a branch in Romania. To be registered with ROI, the Romanian company must present the criminal records issued by Romanian authorities of its non resident shareholder. Such a certificate will now be issued by the police station where the company or the branch is located.

Applications for certificate regarding criminal record can be submitted from 8 AM to 1 PM on Monday, Tuesday and Friday and from 1 PM to 6 PM on Tuesday and Thursday. Certificates can be withdrawn within the same time frame.

The documents requested upon application are the following:

- a) Written application signed by the entity's legal representative or its empowered person with full identification data of the entity (denomination and previous denomination, if applicable, Trade Register registration number, tax registration number, nationality, registered address, identification data of the empowered person: name and surname, identity card, personal code - CNP), application rationale – standard form (Appendix 35 to Government Decision 345/2010);
- b) Receipt of payment of the issuance fee (RON10);
- c) A RON 2 fiscal stamp;
- d) Written power of authorization (*no notary being involved*), signed and stamped given by the legal representative of the legal entity to the individual who will submit the application file and will withdraw the certificate of criminal record – standard form (Appendix 38 to Government Decision 345/2010);
- e) Identity card of the entity's legal representative or of the empowered person (original and copy);
- f) Status certificate ("*certificat constator*") (original and copy) issued by Trade Register as per Law 26/1990 as at the most recent date.

Treasury and Public Accountancy General Inspectorate within Ministry of Public Finance states that the fee for issue of the certificate regarding criminal record can be paid:

- in cash – at local agencies of the Treasury;
- by postal transfer – at local Post offices;
- by bank transfer – from a bank account opened at a bank in Romania, the payment order being stamped for confirmation by the bank.

Depending on the Bucharest district where the entity which intends to apply for registration with ROI is located, the bank account to transfer the fee is as follows:

- RO22TREZ70120330108XXXXX – Treasury District 1;
- RO44TREZ70220330108XXXXX – Treasury District 2;
- RO66TREZ70320330108XXXXX – Treasury District 3;
- RO88TREZ70420330108XXXXX – Treasury District 4;
- RO13TREZ70520330108XXXXX – Treasury District 5;
- RO35TREZ70620330108XXXXX – Treasury District 6;
- C.U.I. – 8609468.

The certificate regarding criminal record is issued within 3 business days at a most and is valid 6 months starting date of issue.

Further information may be found at

http://b.politiaromana.ro/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=125

REMINDER – 2011 consolidated annual financial statements

As per provisions of OMFP 3055/2009 to approve Accounting Regulations in conformity with European Directives (Official Gazette 766/2009), a parent company is exempted from preparing consolidated financial statements if, as at the consolidated financial statement date, the companies which are to be consolidated do not exceed - on the basis of their most recent stand-alone financial statements - 2 of the 3 following criteria in total:

- total assets – Euro 17,520,000;
- net turnover – Euro 35,040,000;
- average headcount during financial year - 250.

Companies which must prepare annual consolidated financial statements may either prepare them in accordance with Accounting Regulations in conformity with Directive VII of the European Economic Community or IFRS.

Regarding accounting regulations applicable to consolidated financial statements, we mention provisions of Law 259 dated 19 July 2007 to amend and complement Accountancy Law 82/1991 (Official Gazette 506/2007):

- Parent companies must prepare annual consolidated financial statements;
- Legal entities which are part of a group and are consolidated with the parent company must have their stand-alone financial statements audited;
- Annual consolidated financial statements must be accompanied by a written representation of the parent company Director in which his/her responsibility for consolidated financial statements is stated and the Director further confirms that:
 - o Accounting policies used in preparing annual consolidated financial statements are in accordance with applicable accounting regulations;
 - o The annual consolidated financial statements present a fair view of the financial position, financial performance as well as other information regarding group activity.
- Members of administration, management and supervision bodies have the obligation to ensure that



**2011 consolidated
financial statements
must be submitted
on or before
31 August 2012**



annual consolidated financial statements are prepared and published in accordance with Order 917 dated 28 June 2005. Publication means submission of documents set per law at the Trade Register and disclosure of indicators which have a public feature in accordance with modalities set by this institution, i.e. publication of these indicators on the website of the Trade Register or remittance upon request of certified copies of the full set of annual consolidated financial statements together with the Director's report and the audit report.

- Annual consolidated financial statements are prepared within 8 months of parent company financial year-end (i.e. by 31 August 2012 for the financial year ended as at 31 December 2011).**

As per Emergency Ordinance 37 dated 13 April 2011 to amend and complement Accountancy Law 82/1991 and to amend other related texts (Official Gazette 285/2011), the Board of Directors or the Directorate of the parent company as defined in applicable accounting regulations must **submit the consolidated annual financial statements to territorial units of MFP** within 15 days starting date of approval as per legal provisions in force.

REGULATIONS REGARDING SOCIAL CONTRIBUTIONS STARTING 1st JULY 2012

Starting 1st July 2012, social contribution obligations ruled by the Fiscal Code upon income derived from independent activities, agricultural activities, associations which are not legal entities **are administrated by ANAF**.

We present social contributions for the 3 main categories of income of independent activities to which the new regulations apply, below.

Category I – Free lancers (PFA) + Professions

Contribution to social insurance (CAS - Pension) by PFA and professions

Circumstances in which pension contributions ARE NOT DUE

When the individual is insured in the public pension scheme.

Also, pension contribution is not due if the individual benefits from one of the categories of pension paid by the public pension scheme.

Monthly contribution base

Declared income via statement 600

THRESHOLDS for declared income:

- lower: minimum 35% of average gross salary
 - upper: capped at 5 times the average gross salary
- For 2012: between RON 741 and RON 10,585.

If $(\text{income} - \text{expenses})/12$ is lower than 35% of the average gross salary, pension contributions are not due.

Contribution rate

31.3 %

Procedure

Step 1. Each year, the taxpayer must submit form 600 with ANAF, by which he/she declares the insured income for each month of the year on or before 31 January. If the PFA starts his/her activity during the year, form 600 must be submitted within 15 days of inception date.

Step 2. ANAF issues the Decision (form 610) regarding quarterly advance payments for pension contribution to inform the taxpayer of amounts to be paid as at the following deadlines:

- 25 March
- 25 June
- 25 September
- 25 December

Step 3. At each quarterly deadline, the taxpayer pays the amount disclosed in form 610 into the Treasury bank account which is published by ANAF.

Health contribution (CASS) by PFA and professions

Circumstance in which health contributions ARE NOT DUE

NO EXCEPTION: Health contributions are always due.

Monthly contribution base

$(\text{Collected income} - \text{Expenses incurred in the scope of obtaining income, social contributions excluded})/12$
If this income is the only income upon which health contribution is due, the monthly contribution base cannot be less than the minimum gross base salary.

For 2012: RON 700.

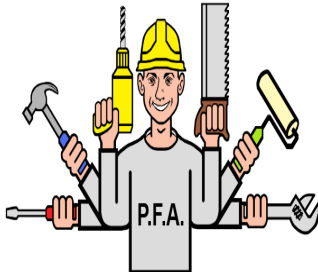
Contribution rate

5.5 %

Procedure

Step 1. Each year, the taxpayer has the possibility to submit form 220 to ANAF on or before 31 January by which he/she declares the estimated income for the determination of income tax. If the PFA starts his/her activity during the year, form 220 must be submitted within 15 days of inception date.

Nota Bene: in case the taxpayer has carried out his/her activity the previous year and does not submit the statement of estimated income, figures disclosed in the statement of realized income (form 220) will be taken into account.



PFA health contribution is always mandatory and based on net income



Step 2. ANAF issues the Decision (form 620) regarding quarterly advance payments for health contribution to inform the taxpayer of amounts to be paid as at the following deadlines:

- 25 March
- 25 June
- 25 September
- 25 December

Step 3. At each quarterly deadline, the taxpayer pays the amount disclosed in form 620 to the Treasury bank account which is published by ANAF

Step 4. At the latest 25 May of the subsequent year, the taxpayer submits his/her statement of realized income (form 200).

Step 5. Based upon amounts declared on the statement of realized income, ANAF calculates the final amount of health contribution and sends to the taxpayer the taxation decision in which the eventual remaining health contribution to be paid taking into account quarterly advance payments paid during the year is disclosed.

Step 6. The taxpayer pays the remaining health contribution within 60 days starting receipt of taxation decision.

Unemployment contribution by PFA and professions

Unemployment contribution remains **optional** as per Law 76/2002.

Category II – Income from intellectual property

Very important: if the author has opted for the determination of income under the real regime, the same regulations as for the PFA which are presented above apply, with, however, a difference: in this case, exceptions presented below regarding health contribution which are specific to the persons who derive income from intellectual property apply.

If income tax is withheld at source, the following regulations apply regarding social contributions:

Contribution to social insurance (CAS - Pension) by authors under withheld income tax regime

Circumstance in which pension contributions ARE NOT DUE

When the individual is insured in the public pension scheme.

Also, pension contribution is not due if the author benefits from one of the categories of pension paid by the public pension scheme.

Monthly contribution base

Income less 20% or 25% of the income to cover expenses.

CAPPED at:

5 times the average gross salary.

For 2012: RON 10,585.

Contribution rate

10.5%

Procedure

Pension contribution is withheld by the income payer which transfers it by the 25th of the month after income was paid.

There is no subsequent obligation, this one being final.

Health contribution (CASS) by authors under withheld income tax regime

Circumstance in which health contributions ARE NOT DUE

When the author also derives income with the following features:

- salaries and assimilated to salary;
- unemployment allowances;
- pensions which does not exceed RON 740 per month;
- other income from independent activities for which payment of health contribution is mandatory;
- activities carried out on the base of contracts/agreements concluded as per the Civil Code as well as on the basis of agent contracts;
- activities of accounting and technical expertise, judiciary and extra judiciary;
- association with a taxpayer legal entity as per provisions of Title IV¹ of the Fiscal Code which does not generate a legal entity;
- associations which are not legal entities, meaning associations between resident individuals associated to Romanian legal entities, for income realized both in Romania and abroad by associations which are not legal entities.

Monthly contribution base

Income less 20% or 25% of the income in respect of expenses.

LOWER THRESHOLD:

If this income is the only income upon which health contribution is due, the monthly contribution base cannot be less than the minimum gross base salary.

For 2012: RON 700.

Contribution rate

5.5%

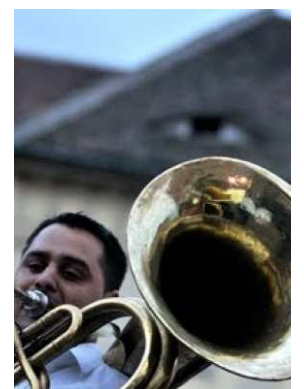
Procedure

Health contributions are withheld by the income payer which transfers amounts collected by the 25th of the month after the income was paid.

There is no subsequent obligation, this being final.



**In some cases,
the author is not
subject to social
contributions**



Unemployment contribution by authors under withheld income tax regime

Unemployment contribution remains **optional** as per Law 76/2002.

Category III – Income derived from contracts concluded as per the Civil Code

Be aware! These regulations apply in cases where the activity is considered an independent activity and cannot be considered a dependent activity. In case of contracts concluded as per the Civil Code where a dependent activity is carried out, specific regulations applicable to salary income apply.

Contribution to social insurance (CAS - Pension) by individuals who derive income from contracts concluded as per the Civil Code

Circumstance in which pension contributions ARE NOT DUE

When the individual is **insured in the public pension scheme**.

Also, pension contribution is not due if the person under civil contract benefits from one of the categories of pension paid by the public pension scheme.

Monthly contribution base

Gross income as per provisions of the contract concluded between the Parties.

CAPPED at:

5 times the average gross salary.

For 2012: RON 10,585.

Contribution rate

10.5%

Procedure

Pension contribution is withheld by the income payer, which transfers the amount collected by the 25th of the month after income was paid.

There is no subsequent obligation, this one being final.

Health contribution (CASS) by individuals who derive income from contracts concluded as per the Civil Code

Circumstance in which health contributions ARE NOT DUE

NO EXCEPTION: Health contribution is always due.

Monthly contribution base

Gross income as per provisions of the contract concluded between the Parties.

LOWER THRESHOLD:

If this income is the only income upon which health contribution is due, the monthly contribution base cannot be less than the minimum gross base salary.

For 2012: RON 700.

Contribution rate

5.5%

Procedure

Health contributions are withheld by the income payer which transfers funds collected on or before the 25th of the month after income was paid.

There is no subsequent obligation, this one being final.

Unemployment contribution by individuals who derive income from contracts concluded as per the Civil Code

Unemployment contribution remains **optional** as per Law 76/2002.

EXAMPLES

Example 1 - An individual obtains salary income as well as PFA income. Does he/she have to pay pension contribution (CAS), health contribution (CASS), unemployment contribution on his/her PFA income?

If the PFA activity cannot be considered a dependent activity, then:

- Pension contribution (CAS) is not mandatory;
- He/she must pay the health contribution (CASS) at the contribution rate of 5.5% of **net** income he/she derived from his/her PFA activity;
- Unemployment contribution is not mandatory.

Example 2 - An individual derives income only as a PFA. Does he/she have to pay pension contribution (CAS), health contribution (CASS), and unemployment contribution on his/her PFA income?

If the PFA activity cannot be considered a dependent activity, then:

- He/she must pay pension contribution (CAS) at the contribution rate of 31.3% on his/her declared income;
- He/she must pay health contribution (CASS) at the contribution rate of 5.5% on his/her **net** realized income;
- Unemployment contribution is not mandatory.

Example 3 - An individual only obtains income from author rights for which income tax is withheld. Does he/she have to pay pension contribution (CAS), health contribution (CASS), unemployment contribution on his/her author rights?

- He/she has to pay pension contribution (CAS) at the contribution rate of 10.5% on the gross income less 20% or 25% in respect of expenses;
- He/she has to pay health contribution (CASS) at the contribution rate of 5.5% upon the gross income less 20% or 25% in respect of expenses;
- Unemployment contribution is not mandatory.



**Health contributions
are always mandatory
for a person under
civil contract**



Example 4 - An individual obtains income from author rights for which income tax is withheld as well as salary income. Does he/she have to pay pension contribution (CAS), health contribution (CASS), unemployment contribution upon his/her author rights?

- Pension contribution (CAS) is not mandatory;
- Health contribution (CASS) is not mandatory;
- Unemployment contribution is not mandatory.

Example 5 - An individual obtains income from a contract concluded as per the Civil Code for which income tax is withheld as well as salary income. Does he/she have to pay pension contribution (CAS), health contribution (CASS) and unemployment contribution on income he/she derives from the contract concluded as per the Civil Code?

If the activity carried out on the basis of the contract concluded as per the Civil Code cannot be considered a dependent activity, then:

- Pension contribution (CAS) is not mandatory;
- He/she must pay health contributions (CASS) at the contribution rate of 5.5% on gross income set as per contract;
- Unemployment contributions is not mandatory.

Example 6 - An individual obtains income only from a contract concluded as per the Civil Code for which income tax is withheld. Does he/she have to pay pension contribution (CAS), health contribution (CASS), unemployment contribution upon income he/she derives from the contract concluded as per the Civil Code?

If the activity carried out on the basis of the contract concluded as per the Civil Code cannot be considered a dependent activity, then:

- He/she must pay pension contributions (CAS) at the contribution rate of 10.5% on the gross income set as per contract;
- He/she must pay health contributions (CASS) at the contribution rate of 5.5% on the gross income set as per contract;
- Unemployment contribution is not mandatory.

REMINDER – Unemployment allowances for new graduates

Graduates who, 60 days after the date of their graduation, have not succeeded in finding a job may receive unemployment allowances. These are granted after the expiry of the period of 60 days upon registration with the Labour Agency, 30 days after expiry of that period of 60 days at the latest.

Unemployment allowances are granted once for each form of education sanctioned by a diploma. The amount is 50% of the social reference indicator per month and is granted for a period of 6 months.

Graduates who, on the date of the application, continue their education do not qualify for unemployment allowances.

As per Emergency Ordinance 108 dated 6 December 2010 to amend and complement Law 76/2002 regarding the regime of unemployment insurance and enhancing employment (Official Gazette 830/2010), the person who applied for their unemployment rights but refused a position adequate for his/her training or level of studies, or refused to benefit from services provided by employment agencies or attend a professional training session cannot benefit from unemployment allowances.

REMINDER – Reduction of employer unemployment contributions for employers who hire unemployed persons for at least 6 months

As per article 93 of Law 76/2002 on the unemployment regime, employers which hire persons who were unemployed and maintained the labour relationship for a period of at least 6 months from hire date, benefit of a reduction of 0.5% of contributions they owe to the unemployment insurance Budget. The incentive is granted starting the subsequent fiscal year for a period of 6 months and consists of a reduction of 0.5% of monthly contributions due at a ratio of the number of newly hired employees and average headcount in the respective year. The employer will submit an application (the model was published with Implementation Norms of the Law) to the Bucharest or local Employment Agency accompanied by the following documents:

- Nominative list of persons hired who were unemployed and registered as such with the Bucharest or local Employment Agency and who have been employed for a period of at least 6 months;
- Photocopies of the labour contracts for persons disclosed on the above-mentioned list.

The application with accompanying documents is submitted at expiry of the 6 month period during which the persons who were unemployed at hire date and registered with the Employment Agency have been employed, but no later than 30 June of the fiscal year which follows the year the 6 months period ends.

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 July 2012:

1 EUR = 4.5694 RON; 1 USD = 3.7242 RON; 1 CHF = 3.8040 RON; 1 GBP = 5.8428 RON.



Graduates who do not find a job may benefit from unemployment allowances



AUGUST 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
- 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 August 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 Tuesday 7 August 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 July 2012. Starting August 2012, VAT returns shall be submitted monthly.

That Friday 10 August 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 Friday 10 August is the last day to pay

- Hotel tax
- Advertising service tax

That Wednesday 15 August is a legal holiday, Assumption

That Thursday 16 August is the last day to submit

- Accounting Report as at 30 June 2012**
- INTRASTAT statement for July 2012 (standard or extended submitted on-line)
- Statements of acquisitions and supplies in the field of energy in July 2012.

That Monday 27 August 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 July 2012
- Informative Statement on domestic supply/services rendered and acquisitions regarding July 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 ("ecotax" excluded).

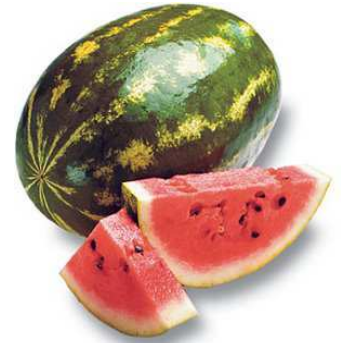


**Accounting Report
as at 30 June 2012
must be submitted
on or before
16 August 2012**



That Monday 27 August 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 July 2012
 - o Tax on interest income
 - o Tax on investment income
 - o Tax on pension income
 - o Tax on income from prizes and gambling
 - o Tax on income from other sources
 - o Contribution for non employment of disabled persons for employers with headcount over 50
- Liabilities to the sole account – Public Insurance Budget and special funds
 - o Social security contribution (*pension*)
 - o Health insurance contribution
 - o Medical leave contribution and health insurance allowance
 - o Unemployment contribution
 - o Contribution to fund to guarantee payment of salary liabilities
 - o Contribution to work accident and occupational disease fund.
- Contribution to Environment Fund ("ecotax" excluded).

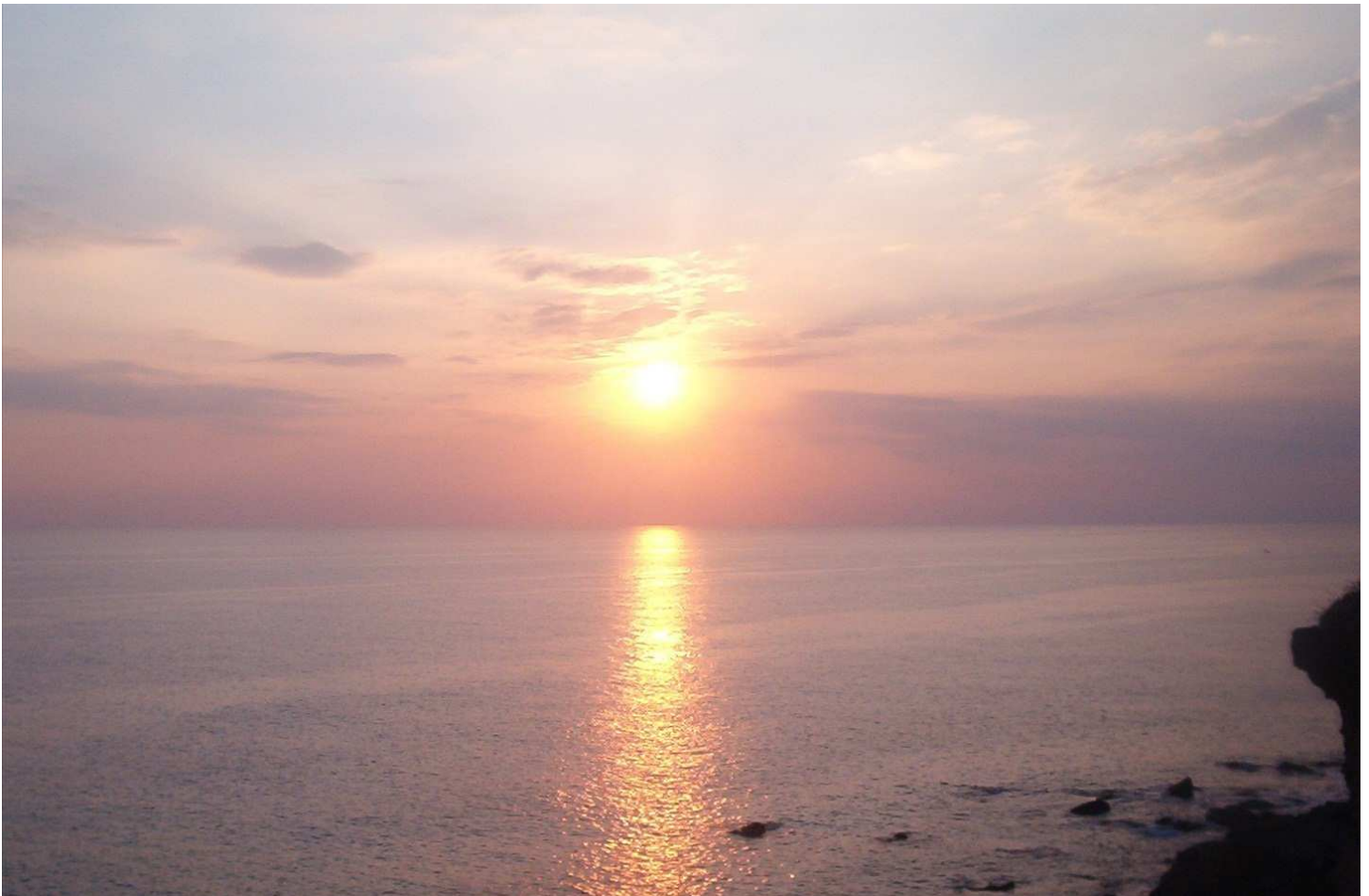


That Friday 31 August is the last day for preparation and submission of 2011 consolidated financial statements.

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) ³	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: The contribution to fund to guarantee payment of salary liabilities is also to be calculated upon health insurance allowances but only in respect of the first 5 days of temporary incapacity of work supported by the employer as well as upon allowances for temporary incapacity of work further to a work accident or occupational disease but only in respect of the first 3 days of temporary incapacity of work supported by the employer.

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

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Our Mission:
Adding Value to Client's Business

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

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