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ORDINANCE 15 dated 23 August 2012 to amend and complement Law 571/2003 regarding the Fiscal Code (Official Gazette 621/2012)

This Ordinance amends the Fiscal Code, most amendments being effective 1st January 2013. In summary, they relate to chargeability of VAT upon collection of invoices, amending the procedure for issuing invoices, fiscal treatment of electronic invoices, defining the new register of taxable entities which apply the new system of VAT upon collection, amendments to VAT adjustments for capital goods and for assets other than capital goods.

Changes introduced by the new Ordinance are applicable from 1 September 2012 and 1 October 2012 are presented below.

The next APEX Team Newsletter will describe the changes which will go into effect in 2013.

Changes effective 1 September 2012

Income tax

An exception is introduced for the requirement for taxpayers to withhold income tax related to activities carried out under the Civil Code and under agent contracts at source. Thus, the income tax is not withheld at source in case of economic activities carried out independently or by freelancers duly registered for tax purposes according to legislation in force.

Payers of income, legal entities or other entities that are required to keep accounting records, do not have the obligation to calculate, withhold at source and pay the income tax if the income is obtained by:

- associations which are not legal entities;
- legal entities maintaining single entry bookkeeping and for which income tax is paid by each associate, for his/her individual income;
- individuals for rental income.

Social contributions

Article 296¹⁹ of the Fiscal Code is changed regarding submission of Form 112 for resident individuals who receive income from dependent activities carried out in Romania, as well as non-resident individuals who receive income from dependent activities, in compliance with international agreements assumed by Romania.

Consequently if these individuals obtain salary income from employers from States not covered by EU regulations on coordination of social security systems or from states with which Romania has not concluded agreements or conventions on social security and the social security contributions are due, then the individuals should submit form 112 directly or through a tax representative/agent and should pay the social security contributions (both employer's and employee's contributions) only if there is an agreement to this effect with the employer. The same obligations are owed by the Romanian individuals who obtain salary income from diplomatic missions and consulates accredited in Romania, in cases where the diplomatic missions/consulates do not opt to assume the declarative obligations and payment of social security contributions.

Provisions related to submission of Form 112 have been amended for employers which do not have a registered headquarter or representative office in Romania as follows:

- Resident individuals who receive income from dependent activities carried out in Romania, as well as non-resident individuals who receive income from dependent activities, in compliance with international agreements assumed by Romania and obtain salary income from non-resident employers which do not have an establishment or representative office in Romania and the social security contributions are due in Romania, then the individuals should submit form 112 and should pay the social security contributions (both employer and employee contributions) only if there is an agreement to this effect with the employer. Employers have the obligation to submit information regarding this agreement concluded with employees in this respect to Romanian fiscal authorities.
- If such agreements were not concluded between the non-resident employer and employee, then the employer has following obligations:
 - o pay the employer's social security contributions;
 - o withhold and pay the employee's social security contributions;
 - o declare obligations through the submission of Form 112 directly or through a tax representative/agent.

Contents:

- Important changes to the Tax Code, mostly applicable in 2013
- Changes to form 112
- Changes to the structure of form 100
- Suspension of law concerning commercial operations made by electronic means
- Completion of accounting regulations approved by OMPF 3055/2009
- Amendment to the Fiscal Procedure Code
- Changing the registration procedure for VAT
- Changes in the registration procedure for Intra-Community Operators' Registry
- State aid to support investment in new technology and creating new jobs
- Change in taxes paid to the unique budget account
- Abusive terms in contracts between professionals and consumers
- Re-publication of the Code of Civil Procedure
- Change in instructions for on-line submission of declarations for excise goods under EMCS-RO Stocks
- Revocation procedure concerning access to on-line filing service
- September agenda
- Social indicators

Social contribution obligations on income derived from independent activities, agricultural activities, and associations which are not legal entities are not due for the following categories:

- When the individual **is insured in the public pension scheme;**
- When the individual is insured in other social security systems not integrated in the public pension scheme;
- When the individual is pensioner.

Regarding advance payments for social contributions due by individuals who obtain income derived from independent activities, it is mentioned that the payers of the income are required to calculate, withhold and pay social contributions for **only** the individuals that obtain such income subject to withholding at source, such as income from intellectual property rights, income from activities under the Civil Code, income from expert activities in accounting, technical, judiciary and extra-judiciary work, income from agricultural activities, **other than** activities performed on an independent basis or as fiscally registered free-lancers. These provisions are similar to changes introduced to income tax (mentioned above). As an exception, payers of income calculate, withhold and pay social contributions for individuals who obtain income in accordance with an agent contract.

Changes effective 1 October 2012

Corporate tax - recovery of tax losses

There is a change in the rule regarding recovery of tax losses for taxpayers that cease to exist as a result of a merger or spin-off. Until now these losses could not be recovered. According to the current changes, the loss is recovered by the newly created entities or by the entities that take over the patrimony of the absorbed or spun-off entity, in proportion of the assets and liabilities transferred according to the merger/spin-off agreement.

Entities which do not cease to exist after a spin-off could recover tax losses together with entities that assume ownership of a portion of patrimony in the same ratio of the assets and liabilities transferred, according to the spin-off agreement.

Similarly, Article 27¹ of Fiscal Code was amended regarding mergers, spin-offs, partial spin-offs, transfers of assets and exchanges of shares concerning companies from two or more EU Member States. In this respect, if the company which transfers assets/liabilities records tax losses, such tax losses shall be recovered by the permanent establishment in Romania of the receiving company.

The same changes are also applicable in situations where a European company or European cooperative company records tax losses. The tax losses should be recovered by the permanent establishment of the European company or the European cooperative company in Romania.

ORDER 1045 dated 31 July 2012 to approve the form, content, submission and processing of "Return regarding social contributions, income tax and nominative list of insured persons" (Official Gazette 600/2012)

The Order is issued by the Ministry of Public Finance in common with the Ministry of Health (Order 793 dated 8 August 2012) and the Ministry of Labour, Family and Social Protection (Order 2084 dated 6 August 2012).

The Order approves the template and content of Form 112 "Return regarding social contributions, income tax and nominative list of insured persons" as well as "Appendix 1.1 – Employer" and "Appendix 1.2 – Insured persons."

The updated Form 112 is used to report income tax and social security contributions starting July 2012, having a submission deadline on 25 August 2012.

For the reporting periods from 1 January 2011 to 30 June 2012, Form 112 is completed according to provisions of Government Decision (GD) 1397/2010.

The obligation to submit Form 112

The following categories are required to submit Form 112:

- individuals and legal entities that have the quality of employer and assimilated entities as referred to in article 296 index 3 and article 296 index 19 paragraph (2) of the Fiscal Code;
- income payers represented by legal entities or other entities that are required to keep accounting records, calculate, withhold and pay the tax as prepayments for income represented by: intellectual property rights; activities carried out under the Civil Code and agent contracts, expert activities in accounting, technical, judiciary and extra-judiciary work; the income of an individual from an association with a legal entity, according to title IV ^ 1, which does not give rise to a legal entity;
- income payers which are Romanian legal entities for income derived by individuals in associations which does not give rise to a legal entity;
- income payers (specialized units for collection, processing or other industrial units) which have the obligation to withhold income tax on income derived by individuals from the sale of agricultural products obtained after harvesting, in its natural state, from owned or rented land.

Submission

Form 112 should be submitted on-line by electronic means.

On-line submission requires the taxpayer to hold a qualified certificate, issued in accordance with Law 455/2001 regarding electronic signatures.

Deadline for submission of Form 112

The form is submitted as follows:

- quarterly, by the 25th day of the month following quarter end by the employers and assimilated enti-



Fiscal losses can now be recovered in case of merger or spin-off

ties:

- o associations, foundations or other non-profit organizations which are legal entities - except public institutions - which had average headcount of up to 3 employees (3 excluded) during the previous year
- o legal entities subject to profit tax which recorded total revenue of up to Euro 100,000 and had average headcount of up to 3 employees (3 excluded) during the previous year
- o legal entities subject to tax on micro enterprise revenue which had, during the previous year, average headcount of up to 3 employees (3 excluded)
- o licensed individuals (PFAs) and individual entrepreneurs as well as individuals who carry out a profession, and associations which are not legal entities formed between individuals which have staff employed on the basis of a labour contract as per law
- unless the option to remain under the monthly submission and payment regime is exercised.
- monthly, by the 25th of the following month for which the income tax and social contributions are due by other employers and assimilated entities.

Pay attention! Quarterly submission consists of filing all three form 112s which were prepared for each month of the quarter, by the 25th of the month after quarter end.

Correction to Form 112

A rectifying statement is to be submitted in the following situations:

- correction of income tax and social contributions payable by employers and assimilated entities;
- changes to the identification data of the insured person;
- changes to the data on the basis of which the contribution period and the pension points for the insured person are set, or in the case when one or several insured persons were omitted or should not have been recorded and the record is to be cancelled.
- correction of other information required by the form.

Corrections of Form 112 for reporting periods between 1 January 2011 and 30 June 2012 should be made in accordance with provisions of GD 1397/2010, using guidance on preparation valid for those periods.

For reporting periods after 1 July 2012 the rectifying form should be submitted on the template provided by the new law.

Other provisions

The new Order also modifies Appendix 2 regarding the Fiscal Receivables Nomenclature that are reported in Form 112, adding a list of income taxes that were previously reported on the Form 100 ("State budget liability return") through the end of June 2012, as follows:

- row 35 - income tax from intellectual property rights;
- row 36 - income tax from the activities carried out under Civil Code and agent contracts;
- row 37 - Income tax from activities of experts in accounting, technical, judiciary and extra-judiciary work;
- row 38 – Income tax of an individual from an association with a legal entity, according to title IV ^ 1, which does not give rise to a legal entity;
- row 39 – Income tax from agricultural activities according to Art. 71 letter d) of the Fiscal Code.

The above taxes are declared in the Form 112 for obligations related to periods starting with July 2012, having the reporting deadline on 25 August 2012.

ORDER 1135 dated 30 July 2012 to amend ANAF Presidential Order 101/2008 to approve model and content of forms used to declare taxes and contributions under self-assessment or withholding regime (Official Gazette 582/2012)

The Order updates the procedure to complete Form 100 ("State budget liability return") and the nomenclature of obligations that are reported on Form 100.

There are 5 positions removed from the nomenclature of obligations that are reported on Form 100, as follows:

- income tax of individuals from an association with a micro-enterprise legal entity, which does not give rise to a legal entity;
- income tax from intellectual property rights;
- income tax from activities of experts in accounting, technical, judiciary and extra-judiciary work;
- income tax from activities carried out under Civil Code and agent contracts;
- income tax from agricultural activities.

Important! New provisions apply to obligations due from 1 July 2012 onwards and the fiscal receivables mentioned above are declared on Form 112 starting with obligations for July 2012 having the reporting deadline of 25 August 2012.

ORDINANCE 21 dated 23 August 2012 on the suspension of applicability of provisions of Law 148/2012 regarding recording commercial operations by electronic means (Official Gazette 623/2012)

The Ordinance suspends the applicability of provisions of Law 148/2012 regarding recording commercial operations by electronic means until 1 January 2013.

The suspension is justified by the fact that certain changes to the existing technical infrastructure are necessary to enable the implementation of changes in issuing, transmission and archiving electronic



**Form 112 updated
with the
legislative changes
after 1 July 2012**



invoices.

Provisions of Law 148/2012 were presented in the APEX Team Newsletter no. 7 in July 2012.

ORDER 1118 dated 20 August 2012 amending and supplementing Accounting Regulations approved by the ORDER 3055/2009 (Official Gazette 603/2012)

The Order amends Accounting Regulations (Order 3055/2009), which is the framework of accounting regulations in Romania.

We present the main changes below:

Accounting for green certificates

Greenhouse gas emission certificates purchased with a view to realize long term profit should be classified as other investments in the non-current assets category and presented separately.

If they are purchased with the view to realize short term profits they should be classified as short term investments and presented separately.

Renewable energy which benefit from green certificates issued by the transportation and system operator shall record the certificates received in account 508 – “Other short-term investments and assimilated receivables” – by analytical account, contra to the deferred income account (account 472).

Initial recognition of green certificates should be made at fair value (the transaction price published by the energy market operator – OPCOM SA - on the date when green certificates are received).

At the end of the financial year, the green certificates that were recognized in account 508 – “Other short-term investments and assimilated receivables” – are revalued at the transaction price published by OPCOM SA for the last transaction of the exercise, the differences being recognized in the Profit & Loss account - account 768 - Other financial income, or 668 - Other financial expense, as appropriate.

Electricity suppliers and manufacturers obliged by law to purchase a number of green certificates annually, recognize the purchased certificates in the Profit and Loss account - account 652 - Expenditure on environmental protection.

When other entities purchase green certificates with the view to realize short-term profit, they are treated as short-term investments and recorded in account 508 – “Other short-term investments and assimilated receivables,” by analytical account.

Green certificates that were cancelled, according to the law, because they have not been used during the period of validity or cancelled because they were improperly obtained from an accredited economic operator, if they have not yet been traded, are recorded in account 668 - Other financial expenses.

The Order shall apply to the financial statements covering the 2012 financial year.

Third party debt collection by assignment

In the case of a transfer of a receivable, the difference between the nominal value of the receivable and the amount payable to the transferor represents income at the date when the rights and obligations are established through the assignment contract.

For the part of the transferred receivable that is estimated as unrecoverable, an impairment provision should be recognized at the time of transfer, the book entry being: 6814 = 496 (6814 – Impairment of current assets; 496 - Provisions for doubtful sundry debtors).

The provisions are applicable to the assigned debts that are recorded in the assignee's book of accounts, which are in effect after 1 July 2012.

ORDINANCE 16 dated 23 August 2012 to amend and supplement Government Ordinance 92/2003 on the Code of Fiscal Procedure (Official Gazette 618/2012)

We present the main changes to the Code of Fiscal Procedure below:

Date of submission of tax returns

Date of submission of returns by remote means of transmission to the e-Romania portal is the date of registration of the returns on the portal as mentioned in the electronic message transmitted by the data management application, under condition of validation of the content of the return. If the return is not validated, the date of submission is the date of validation as mentioned in the electronic message transmitted by the data management application.

As an exception, if the tax return was submitted by the legal deadline, and the electronic message transmitted by the data management application concludes that the return is not validated due to errors in the structure of the reported information, the date of submission is the date of the initial electronic message if the taxpayer submits a new valid return by the last working day of the same month.

The order of settlement of fiscal liabilities

By exception to the general rule, in the case of fiscal liabilities set by tax inspection and fines of any kind, the liability chosen by the taxpayer has the priority of settlement.

These provisions are applicable starting 1 November 2012.

Suspension of forced execution of collection when a letter of guarantee is issued

In cases of claims against administrative acts of fiscal authorities that enforce tax liabilities, the forced execution is suspended or is not started for tax liabilities that are subject to the claim if the taxpayer presents to the fiscal authorities a letter of guarantee covering the amount of the claim. The validity of the letter of bank guarantee must be at least 6 months from date of issue.

In cases when the claim is rejected in full or partially while the letter of guarantee is within its validity period, the fiscal authorities execute the guarantee on the last day of validity if all the following conditions are met:



Accounting for green certificates and transfer of receivables newly introduced in legislation



- the taxpayer does not pay the tax liabilities for which the claim was rejected;
- the taxpayer does not present a new bank letter of guarantee;
- the Court has not ordered a suspension of the forced execution of administrative act according to Law 554/2004.

Letter of guarantee remains without object in the following situations:

- the claim was admitted in full;
- the Court admits the taxpayer's request to suspend the forced execution of the administrative act according to Law 554/2004

ORDER 1100 dated 20 July 2012 to amend ANAF Presidential Order 1.967/2011 to approve Registration Procedures under the scope of VAT in accordance with provisions of article 153 point (1) letter a) or c) of Law 571/2003 – Fiscal Code and to approve the model and content of forms (Official Gazette 569/2012)

The Order modifies the Procedure of registration under the scope of VAT.

The general rule is outlined, according to which registration for VAT purposes is to be considered valid from the communication date of the decision approving registration for VAT purposes. Until now, a different rule existed for the companies which achieve a turnover below the ceiling of registration (and are therefore not required to register) but opt for registration. In this case their registration was valid from the first day of the month following that in which the decision was communicated. Starting August 2012 the general rule also applies to the registration by option.

Documentation required for registration is mentioned below:

- the application for VAT registration and documents provided by law, for the taxable entities who are subject to registration with the Trade Registry and require registration for VAT purposes according to article 153 paragraph (1). a) of the Fiscal Code;
- the statement of registration having filled in the section, "Data regarding the taxpayer fiscal status" - 'vector fiscal,' VAT section, for taxable entities that are not required to register with the Trade Registry and requires registration for VAT purposes according to art. 153 par. (1). a) of the Fiscal Code;
- the appendix to the application form ("declaratia de mentiuni" – form 010) having filled in the section "Data regarding the taxpayer fiscal status" - 'vector fiscal,' VAT section, for taxable entities applying for registration for VAT purposes according to art. 153 paragraph (1). c) of the Tax Code.

The Order also updates the necessary forms to register for VAT purposes.

ORDER 1180 dated 8 August 2012 to amend ANAF Presidential ORDER 2.101/2010 approving the Procedure for the organization and operation of the EU Operators' Registry (ROI) and approving the model and content of different forms (Official Gazette 587/2012)

The order updates the list of documents required for registration in the EU Operators' Registry.

A new provision is the submission of a "certificat constatator" issued by the Trade Register showing the distribution of share capital between associates (request valid for all the companies set up under Law 31/1990 on commercial companies). The certificate must be valid on the application date.

Along with this new document all other forms must be submitted as follows:

- Application (form 095);
- Judicial certificates issued by Romanian authorities for the Directors in case of public companies or partnerships limited by shares;
- Judicial Certificates issued by Romanian authorities for the shareholders who hold at least 5% of share capital of commercial companies and directors of commercial companies other than the legal entity categories mentioned above;
- Other documents in case there are facts recorded in the Judicial Certificate.

In case a penal action (in connection with EU transactions) against any shareholder or director is started, the commercial company cannot be registered in ROI or is removed, if applicable.

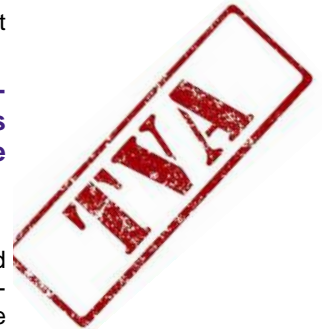
Taxpayers which apply for registration for the EU Operators' Registry starting registration date under the scope of VAT for persons who register under the scope of VAT from set-up date must file form 095 together with form 098 "Application for registration under the scope of VAT as per article 153 (1) (a) of Fiscal Code" or, by case, with the forms for tax registration/mentions (amendments) through which registration under the scope of VAT is applied for as per article 153 or 1531 of the Fiscal Code.

Application for registration with the EU Operators' Registry was previously processed within 10 calendar days starting the registration date of the application with the tax authority. According to the new provisions, the decision to approve or reject the registration with the EU Operators' Registry is communicated at the same date as the communication of the registration under the scope of VAT.

Additional changes and complements were brought in respect of de-registration procedure from the EU Operators' Registry. To summarize, de-registration from ROI can occur ex officio, if:

- The VAT code was cancelled by ANAF;
- The taxpayer no longer has EU transactions in the year following its registration in the EU Operators' Registry;
- The taxpayer has requested de-registration under the scope of VAT;
- A penal case has been opened against one of the company shareholders (holding at least 5% of share capital) or Director for acts regarding commercial transactions.

We would like to remind that according to the Fiscal Code, ANAF can cancel the registration under scope of VAT of an entity in the following circumstances:



Changes in the procedure of registration under the scope of VAT





**Fines for carrying
on transactions by
taxpayers not
registered in EU
Operators Registry**

- if the entity is declared inactive;
- if the entity has entered into temporary inactivity, registered with the Trade Register;
- if the shareholders/Directors of the taxable entity or the taxable entity itself no longer have a clean fiscal file due to registration of breach of law and/or facts set at article 2 point (2) letter a) of Government Ordinance 75/2001 regarding organization and operation of the fiscal file, starting the date of the cancellation decision by tax authorities;
- If, during half of a calendar year, no VAT return has been submitted but the entity is not in the situation mentioned above per letter a) or b). These provisions only apply to entities with monthly or quarterly fiscal reporting periods;
- if, in VAT returns submitted for 6 consecutive months during half a calendar year in the case of entities for whom the fiscal reporting period is the month and for 2 consecutive fiscal periods during half a calendar year for taxable entities for whom the fiscal reporting period is the quarter, no acquisition of goods/services is disclosed or no supply of goods or no service was rendered during these periods to report;
- If the entity was not obliged to apply for registration or was not entitled to apply for registration under the scope of VAT.

DECISION 797 dated 31st July 2012 regarding the public aid regime aimed to promote regional investments through new technology and new job positions (Official Gazette 563/2012)

The decision establishes a public aid regime with the purpose of regional development by investments in new technology and by creating new job positions in the following economic areas:

- Manufacturing, excepting alcoholic beverages and tobacco industry products;
- Production and supply of electricity and heat, gas, hot water and air conditioning;
- Software editing;
- Telecommunications;
- Services in information technology;
- IT services;
- Research and development.

The public aid regime cannot be applied for:

- coal sector activities;
- steel sector activities;
- shipbuilding sector activities;
- synthetic fiber sector activities.

The period for which public financial aid can be granted is 2 years, 2012-2013. Aid payments will be made 2013 – 2018 within the limit of the allocated annual budget. The maximum budget of the assistance is RON 400 million, the equivalent of EUR 100 million, with possibility of extension.

The total estimated number of entities expected to benefit from this public assistance is 10, the average annual number being 5.

Criteria for granting public aid

Entities can benefit from the public aid program if they meet all following criteria:

- a) They are set up under Law 31/1990 on commercial companies;
- b) They intend to make an initial investment in Romania in one of the activity areas mentioned above;
- c) They do not have any outstanding liabilities to the state budget;
- d) They are not included in the category of “companies with difficulties” as defined in chapter 2, section 2.1 of the European Commission Communication - Community Guidelines for public aid for saving and restructuring entities in difficulty, published in the Official Journal of the EU, Series C, No. 244, 1st October, 2004;
- e) They are not in one of the following procedures: forced execution, bankruptcy, judicial reorganization, dissolution, operational closure, liquidation;
- f) Decisions for the recovery of public aid have not been issued against them and in case such decisions have been issued, they have already been executed according to legal provisions;
- g) Other types of aid have not been claimed for the same eligible costs.

Investments, for which the financial aid is required, must meet all the following eligibility criteria:

- a) To be qualified as initial investments - investment consisting of tangible and/or intangible assets related to the implementation of a new unit, the extension of an existing unit, diversification of production through new products, additional or fundamental change in the production process of an existing unit;
- b) To be an innovative investment or to have 20% of the value of the investment plan to be an ITC component;
- c) To create at least 200 new job positions;
- d) To prove the viability of the investment project and the economic efficiency of the entity based on a business plan. This plan is developed for an investment period of 5 years after the date of investment completion;
- e) To prove the contribution to regional development - the contribution to the state budget and local budgets, for the investment, meaning taxes paid to state budget and local budgets for the investment period and 5 years after the completion date, the contribution decreased to the level of public aid



granted. This contribution must be at least equal to the requested public aid. The entity should prove the existence of resources necessary for the investment, excluding public assistance. Entities that benefit from the financial aid should start the investment and should inform the Ministry of Public Finance within a maximum of 3 months from the date of funding approval. In case the entity started the investment before obtaining approval for public aid, the entire investment is not eligible. If the entity hires employees who were made redundant by an affiliated entity, the related costs are not eligible.

The job positions are created as a result of the investment made and should be generated within a maximum 3 years from the investment finalization date.

Payment of public aid

The public aid is paid to entities which already received approval for aid, after having partially or totally made all eligible expenditures subject to the funding agreement. Payment is made based on an application submitted by the entity to the Ministry of Public Finance (MPF), by empowered persons, or by post with confirmation of receipt, within a calendar year, an entity may submit a single application for payment of public aid. This must be accompanied by a number of documents referred to in the present decision and a letter of bank guarantee.

Other provisions

After receiving the public aid, if the investment plan changes, the entity has the obligation to inform the MPF within 10 working days, documenting the technical and economic reasons and providing all other documents mentioned above modified as needed. Two modifications are allowed. Investment plan and job positions creation must be maintained for a period of five years after the completion date and will be monitored by MPF.

During the monitoring period, by 30 June each year, on the basis of the latest financial statement submitted to competent authorities, the entity will provide to MPF information on:

- preservation of the initial investment;
- achievement of the contribution to regional development;
- preservation of job positions;
- letter of guarantee.

Source: DGFP Vâlcea

ORDER 1235 dated 22 August 2012 to amend ANAF Presidential ORDER 1294/2007 regarding taxes, contributions and other amounts deemed fiscal liabilities which are deposited into a sole account by the taxpayer (Official Gazette 619/2012)

Two rows are removed from the list of the fiscal liabilities to be paid into the sole account:

- Row 3 - Income tax for intellectual property revenue and related rights, as defined under art. 7 paragraph (1) point 13(1) of the Fiscal Code
- Row 4 - Income tax for revenue from independent occupations of persons under civil contract.

The Order also replaces Appendix 2 - LIST of the fiscal liabilities payable into the sole account 55.02 "Budget of social insurance and special funds under distribution."

LAW 193 dated 6 November 2000 regarding abusive clauses in contracts concluded between professionals and consumers - New publication (Official Gazette 543/2012)

According to this new publication of the law, all contracts concluded between professionals and consumers for the sale of goods or services rendered will include clear contractual clauses, where no specialized knowledge is needed for understanding. When interpretation of contractual clauses is in doubt, the interpretation will be in favour of the consumer.

The law defines the term "professionals" as any individual or entity which, under the terms of a contract, perform an act of trade, industrial or production, artisan or liberal, or any other person acting for the same purpose in the name or on behalf of a professional.

According to the law it is prohibited for professionals to include abusive clauses in contracts concluded with consumers.

Failure to comply with this provision is punished with a fine between RON 200 and 1,000.

LAW 134 dated 1st July 2010 regarding Code of Civil Procedure – New Publication (Official Gazette 545/2012)

The Code of Civil Procedure establishes the rules of competence and judgment of civil clauses and also the enforcement of court decisions and execution title, for the purpose of Justice in civil matters.

ORDER 1834 dated 8 August 2012 approving the Instructions regarding access of economic operators to the EMCS-RO Inventory platform for on-line submission of returns for acquisitions and sales of excisable products (Official Gazette 595/2012)

ORDER 1087 dated 8 August 2012 to amend and complement the Instructions for on-line submission of returns for acquisitions and sales of excisable products using the EMCS-RO Inventory platform, approved by ANAF Presidential Order 26/2011 (Official Gazette 592/2012)

ORDER 1076 dated 6 August 2012 regarding collection of amounts representing prejudice caused and recovered under provisions of art. 10 of Law 241/2005 for preventing fiscal evasion (Official Gazette 558/2012)

New public aid regime for regional investments in new technology and new job positions



REMINDER – Procedure to be followed in order to revoke the right to submit on-line fiscal returns

If the request to be revoked is made by the holder of the qualified certificate, form 151 "Application to revoke the right to use the service of on-line submission" should be completed. The form may be downloaded from: http://static.anaf.ro/static/10/Anaf/formulare/cerere_151_2009.pdf.

The application should be printed, signed by the certificate holder and taxpayer, scanned and sent by e-mail to admin.portal@mfinante.ro.

If the request for revocation is made by anyone else instead of the holder of the qualified certificate, the form 151 should be submitted in paper format, signed and stamped by the taxpayer, to the local tax authority office. The application should be accompanied by:

- registration certificate (original and copy);
- identification document for the person requesting the revocation;
- power of attorney signed by the taxpayer for the person requesting the revocation.

Attention! Form 151 does not cancel the digital certificate, but only the access right to the on-line submission service.

Source: DGFP Vâlcea

REMINDER – Valuation of monetary items in foreign currency

Exchange rates to be used at the end of August 2012 for valuation of monetary items (cash on hand, receivables, payables) denominated in foreign currency or receivables / payables denominated in RON but pegged to a foreign currency for collection/disbursement:

1 EUR = 4.4595 RON; 1 USD = 3.5484 RON; 1 CHF = 3.7136 RON; 1 GBP = 5.6116 RON.

SEPTEMBER 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 organize 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 Friday 7 September is the last day to submit

- Form 092 (amendments) to change VAT return periods from Quarterly to Monthly for EU acquisitions of goods in August 2012. Starting September, the VAT return will be submitted monthly. The July-August period will represent a distinct fiscal period for which a VAT return will be submitted, and is due by 25 September 2012.

That Monday 10 September 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 10 September is the last day to pay

- Hotel tax
- Advertising service tax

That Monday 17 September is the last day to submit

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



Procedure to
revoke the right to
submit on-line
fiscal returns



That Tuesday 25 September 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 August 2012
- Informative Statement on domestic supply/services rendered and acquisitions regarding August 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).

That Tuesday 25 September 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 August 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.
- Income tax on income from independent activities (Installment III)
- Income tax on rentals, except rentals of agricultural land (Installment III)
- Tax on agricultural revenue – on an effective basis (Installment III)
- advance payment of 50% of the income tax on the income from agricultural activities (first installment) by taxpayers who obtain income from agricultural activities taxed on income quota regulations;
- the health insurance contribution due by:
 - o Taxable persons referred to in Fiscal Code, article 296 ^ 21 para. (1) let. a) - e): individual entrepreneurs; members of a family enterprise; licensed individuals (PFA); freelancers; individuals obtaining income from intellectual property rights, on which income tax is calculated on the basis of the information from single entry bookkeeping.
 - o The taxpayers referred to in art. 296 ^ 21 para. (1) let. g): individuals obtaining income from cultivation and sale of flowers and vegetables in greenhouses and solariums specially designed for such purposes and/or through irrigation systems; the cultivation and sale of small trees, decorative plants and mushrooms; exploitation of vineyard, orchards and other similar.
- Contribution to Environment Fund ("ecotax" excluded).

That Monday 1 October is the last day to submit

- Application for VAT refund for taxable persons established in Romania as per article 147² point 2) of the Fiscal Code (form 318)
- Application for VAT refund for taxable persons who are not registered in the scope of VAT in Romania and are established outside the European Economic Community (EEC) (form 313).

That Monday 1 October is the last day to pay:

- Local taxes on land, construction, means of transport and the tax on advertising billboards (Installment II and final for 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.



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



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

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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