

MAY 2003

Number V

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## TAXATION

In order to correlate certain provisions of the tax legislation, the Government has issued in January this year the Emergency Ordinance no. 36, enactment subject to Parliament approval, which amended and completed it by the Approval Law no. 232 of May 31<sup>st</sup>, 2003.

Such correlation envisages provisions related to the income tax, the value added tax and excise, the local taxes and duties, small size enterprises taxation, as well the collecting of budgetary debts laws and regulations.

**Prior to the income tax assessment, the insurance premiums paid by the employer in the name of the employee shall be deducted**

Thus, upon the amendments brought to the Ordinance no. 36, the expenses related to the insurance premiums in case of labor accidents, professional diseases and professional risk or other insurance premiums paid by the employer in the name of the employee - subject to taxation, pursuant to the law, to the employee natural person - are deemed to represent deductible expenses when the taxable income is assessed.

**For the revenues earned in Romania by foreign legal entities, the formalities relating to the tax assessment, withholding and payment are carried out by the income payer, the resident legal entity of whose securities are subject to transactions or the brokerage/financial investments company**

Such persons incur the obligation to fill in and submit the taxation statement, in the name and on behalf of the foreign legal entity, to assess, withhold and pay the tax on the income earned in Romania by foreign legal persons in connection with real estates, transfer of shares, exploitation of natural resources, transfer of an ownership right held with a Romanian legal entity etc.

**The gross income, earned from activities carried out upon a civil contract, is subject to a fixed quota tax of 10%**

It has to be mentioned that such a civil contract will be deemed validly concluded only if not assimilated to a labor contract for a fixed period, respectively less than 2 hours of work per day and, respectively, 10 hours of work per week.

**If legal requirements are observed, a company has the option to be included in the small size enterprises category, acquiring or loosing this status differently, based on the tax regime it is subject to (on profit or income)**

Starting with the next fiscal year, the option shall be notified to each competent tax authority, by way of statement on its own responsibility, until January 31<sup>st</sup> inclusively.

The status of small size enterprise is lost starting with the next year following that during which one of the legal requirements is no longer complied with.

The tax payers established during a fiscal year will make mention about the option for the small size enterprise tax regime within the registration application with the trade register.

The tangible assets manufacturers, the service providers and the trading legal entities with private capital are subject of such legal tax regime as from the registration date with the trade register, being provided that there have to be met certain legal requirements as to have up to 9 employees in 60 day term as from the date thereof.

**Specifications with respect to the value added tax regime**

Further to the amendments brought to Government Ordinance no. 82/1998, the branches or other similar subsidiary corporate structure without legal personality established by Romanian tax and duty payers are no longer required to be registered as VAT (value added tax) payers.

The existing branches or any other similar subsidiary corporate structure without legal personality, already registered as VAT payers with the Ministry of Finance, are ceasing to have such quality starting with 01.05.2003.

In accordance with the Order of the Public Finance Ministry no. 552/2003, starting with 01.05.2003, the general departments of public finances or the administrations of public finances will identify such subsidiary corporate structures of whose capacity of VAT payers ceases, in order to take them out of the register.

The commercial entities are compelled to change the registration certificates of the branches loosing the capacity of VAT payers.

Within a 15 day term as from receiving the notification concerning the taking out of the VAT register, the tax payers have the

obligation to file the application of registration of mentions with the competent fiscal authority, respectively with the Trade Register Sole Office, in view of carrying out the changing of the fiscal registration certificate and/or the registration certificate of the branches or any other such similar subsidiary corporate structure without legal personality.

After expiring of the 15 day term previously mentioned, the fiscal registration certificates and/or the registration certificates of the branches or of any other similar subsidiary corporate structure without legal personality, VAT payers, for which the change has not been requested, become void *de jure*.

**PRIVATIZATION**

**A**fter long debates, on May the 6<sup>th</sup>, 2003, the Government approved, by Decision no. 489/2003, the Methodological Norms for applying the Government Ordinance no. 25/2002 (“GO 25/2002”) regarding certain measures to follow the execution of the obligations undertaken upon the privatization agreements of the companies (“Methodological Norms”).

The Methodological Norms bring details to GO 25/2002 and provide mainly for the following:

**It has been established the obligation to conclude addenda to the privatization agreements in order to clarify the source of investments performing**

In case of the sale purchase agreements for state owned shares within companies which are not including the source out of which the investments are performed according to

the listing comprised in art. 3 par. 2 of GO 25/2002, the contracting parties are bound to enter into an addendum to insert the provision thereof.

The addendum also has to deal with the contractual obligations having become due prior to GO 25/2002 entering into force.

**It has been adopted the standard completion certificate to be issued by company's censors or auditor, attesting the investments fulfillment**

In order to prove the fulfillment of the investments undertaken under the privatization agreement, the investor is bound to present a certificate issued by company's censors or auditor, confirming the volume and nature of investments performed, their book registration and that the investments sources comply with the contractual or legal provisions.

In this respect, the Methodological Norms adopt the model of the completion certificate to be issued by censors or auditors in order to confirm the investments fulfillment.

**It has been set forth the modality of determining by way of expertise the value of investments performed within the company**

In case the investments performed in accordance with the privatization contract represent contributions in kind or transfers of know-how, patents, licenses and other similar values, their value will be determined upon an expertise carried out by individuals and/or legal entities authorized by law to conduct such activities.

The expertise shall be carried out upon buyer's request, and the individuals and/or

legal entities appointed to determine the value of investments have to be agreed by the Authority for Privatization and Management of State Shareholdings (hereinafter referred to as the "Authority").

**Financial guarantees issued by the investors in case of the investments undertakings and/or the payment of shares price amendment**

Pursuant to the provisions of GO 25/2002, the amendment of the investments undertakings and/or payment of the shares price are subject to issuance in favor of the Authority of a guarantee to cover the value of the unfulfilled investment and/or the price portion not paid. This is to be carried out by way of accordingly establishing a security over a shares stake issued by the company, relating to their face value, or by way of issuing financial guarantees.

The Methodological Norms give details with respect to the financial guarantees, restrictively listing the following guarantee instruments:

- Letter of Guarantee issued by a Romanian bank or a foreign bank with which a Romanian bank has correspondent relationships;
- promissory note backed by a commercial bank agreed by the involved public institution (Authority);
- personal guarantee of an individual or legal entity with Romanian citizenship, respectively nationality, in accordance with the legal provisions, consisting in an unilateral and unconditional payment obligation.

**It has been established the way of proving the fulfillment of investments by a third party in his own name or investor's name**

In case the privatization contract has been entered into before February 2<sup>nd</sup>, 2002, it is deemed to represent investment performed upon the contract the one performed by a different person than the buyer, in his own name, with the additional condition of presenting the evidence attesting the undertaking by the third party to execute the obligations thereof.

In case of the privatization contracts concluded after the 2<sup>nd</sup> of February 2002, the investments could be performed by third parties in the name and on behalf of the buyer.

### INDUSTRIAL PROPERTY

**C**larifications and details to patents regime have been brought by Government Decision no. 499/2003, published in the Official Gazette no. 348/2003, regarding the approval of the Regulation for applying the Law no. 64/1991 ("Regulation").

One should be reminded that, in view of put in accordance our legislation with the European and international enactments regulating the matter, Law no. 64/1991 has been substantially amended by Law no. 203/2002 (Official Gazette no. 340/2002) and further republished in the Official Gazette no. 752/2002.

**The application for a patent registration may be also filed from now on in electronic format or by electronic means**

The provisions and requirements concerning the registration and handling of patent applications and other documents in electronic format or by electronic means will be set forth through instructions issued by the general director of the State Office for

Patents and Trademarks ("OSIM") and will be published in the Official Gazette of Romania, Part I.

The instructions will include, among other issues: provisions and requirements regarding the receiving confirmation, proceedings concerning the grant of the deposit date, authentication means of the documents and identity of the parties communicating with OSIM, provisions referring to application registration in a foreign language etc.

**Clarifications have been brought to the concept of "state of the art"**

One should be reminded that the amendments brought by Law no. 64/1991, republished, envisaged also the extension of the notion of "state of the art".

According to the Regulation, the notion of "state of the art" includes, to the extent they became known to the public, the traditional knowledge also.

**Specific provisions for the inventions in the software field have been adopted**

Although the principle is that software is not a patentable subject matter, the necessity of using specific terms, documents and information lead to the adoption of distinctive provisions to describe inventions in software field.

**Representation by an authorized representative in view of carrying out the proceedings in front of OSIM has become mandatory whenever the concerned person does not have the domicile or registered office in Romania**

Law no. 64/1991, republished, comprises also the exemptions from the mandatory representation, where one could act in his own name.



It is also to be underlined the keeping in the new law form of the possibility only for the industrial property consultants to render representation services.

**The transfer of patents rights by way of assignment or license**

The former enactment was only mentioning the possibility to transfer the rights by way of assignment or license. Beside other legal provisions, the legal regime governing such transactions had to be put in place by the doctrine and case-law.

The Regulation brings details as to the types of assignments or licenses that could be contemplated by the parties, such as full or partial assignments, exclusive or non-exclusive licenses, the possibility of granting sub-licenses etc.

**PRIVATE INTERNATIONAL  
LAW/INTERNATIONAL  
JUDICIARY  
COOPERATION**

During May 2003, the Romanian Parliament has passed several enactments to amend the regulations governing the civil procedure.

Their goal is mainly to harmonize our internal legislation with the European one, to increase international cooperation efficiency, to better organize the internal judiciary system and to speed up the judiciary proceedings.

In the same time, they aim to improve the deficient issues referred to in civil and commercial matters having affected, over the time, the delivering of justice in Romania.

**By Law no. 175/2003, Romania adheres to the Convention regarding the obtaining of evidences abroad in civil or commercial matters, adopted at Hague on the 18<sup>th</sup> of**

**March 1970, published in the Official Gazette no. 331 of May 15<sup>th</sup> 2003**

**The obtaining of evidences in civil or commercial matters from abroad is carried out by rogatory commissions**

The Hague Convention of March 18<sup>th</sup> 1970 aims to increase the judicial cooperation efficiency among the participant states, by way of facilitating the transmitting and performing of rogatory commissions.

These represents procedural instruments allowing the judiciary authority of a contracting state (“the requesting authority”), observing the conditions provided by its internal legislation, to address a request (“rogatory letter”) to the competent authority of another contracting state (“the requested authority”) in order to obtain evidences and judicial documents.

In what regards the evidences subject to request, the rogatory commission could be requested only if the evidences thereof will be used in a pending or future legal proceeding. As regards the judicial documents, the Convention provides for that these do not refer neither to the notification or communication of judicial documents nor to conservative or judiciary measures.

**The justices of a requesting authority may assist to the execution of a rogatory commission**

The Convention sets forth a detailed procedure concerning the transmitting and performing of rogatory commissions. Thus are established, among other issues, the communication means among the different competent authorities of contracting states, the minimal content of the request for assistance representing the object of the rogatory commission, the drafting language, other formalities to be followed with respect to the carrying out of the rogatory commission etc.

The Convention grants the possibility for the justices of a requesting authority to assist to the execution of a rogatory commission. The measure could be subject to prior authorization from the competent authority of the state where the rogatory commission is to be carried out. Pursuant to the Adhering Law no. 175/2003, Romanian justices of a requesting authority may assist to the execution of a rogatory commission, providing that compliance with the additional condition of prior information of the central internal competent authority (Ministry of Justice) is observed.

In the same time, upon the permission granted by the above Convention, Romania has turned inapplicable the provisions allowing the consular or diplomatic agents of a contracting state to conduct activities within Romanian territory relating to independently obtain evidences, with or without restraints.

**Based on Law no. 187/2003, published in the Official Gazette no. 333 of May 16<sup>th</sup>, 2003, specific provisions with respect to the trial cases having foreign elements pertaining to the states of the European Union have been set forth**

The entering into force of this enactment has been set forth after one year as from its publishing date in the Official Gazette.

As an exception from Law no. 105/1992 on the regulation of private international law relationships and the Civil Procedure Code, the new enactment comprises specific provisions with respect to the recognition and enforcement of Court judgments rendered within the EU states.

The subject matter of this law does not cover the trial cases and judgments referring to the legal capacity of individuals, the ownership right resulting out of marriage, the successions, social securities, arbitration, reorganization procedure, liquidation and bankruptcy proceedings or other similar proceedings.

**Romanian Courts do not have jurisdiction anymore to adjudge trial cases against defendants from EU member states without domicile, residence or good will in Romania**

We should mention that, according to the Civil Procedure Code, Romanian Courts were granted jurisdiction to adjudge trial cases filed by a Romanian plaintiff against any defendant from abroad without any residence in Romania.

In addition, there are inserted specific jurisdiction rules in certain subject matters: contracts, maintenance obligation, torts, claims based on a criminal offense, certain particular cases in corporate and maritime law field, insurance, consumers' protection, employment relationships, real estate claims, patents, trademarks, industrial models and designs, enforcement of Courts' judgments etc.

Nevertheless, the jurisdiction of any Court, determined according to this law, is not applicable in case of a parties' agreement with respect to the settlement of any dispute arisen or that might arise out of or in connection with an existing judicial relationship. It is requested for that agreement to be concluded in writing or in any other way making possible to prove, pursuant to the international commercial practices or the law, the parties intent to designate the Court having jurisdiction over the matter.

**The judgments rendered within the EU member states are recognized *de jure* in Romania**

Court Judgments rendered within the EU member states are recognized *de jure* in Romania, in accordance with the conditions provided by Law no. 187/2003. The Romanian Court summoned with a recognition claim in this respect, will have to verify if the judgment subject to recognition infringes the minimal imperative regulations provided by Romanian law.

In what regards the enforcement of the judgments rendered within the member states, the prior approval of the Court having jurisdiction is necessary, upon request of the concerned party, based on verifying the simplified requirements provided by Law no. 187/2003.

In the same time, the law provides for the documents drafted or officially registered as authentic documents, together with assimilated documents, which are enforceable within a member state, to be deemed, upon request, enforceable in Romania.

**The international judicial assistance in civil and commercial matters, regulated by Law no. 189/2003, published in the Official Gazette no. 337 of May the 19<sup>th</sup>, 2003**

The new enactment regulates the whole of the cooperation proceedings among Romanian and foreign judiciary authorities applicable in view of settling a trial case, during its life span.

The communication of documents abroad will be carried out, usually, through the Ministry of Justice, in the ways provided by the applicable international conventions or, absent such conventions, by this law.

There are not prohibited direct communication acts among the Courts having jurisdiction based on bilateral conventions or even in accordance with the

community legislation, after Romania will become member of the EU.

The Ministry of Justice is also designated as the central authority having the role of coordinating the official information flow to and from abroad, information that could pertain both to Romanian law (upon request from foreign authorities), as well as to foreign law (further to Romanian authorities request).

**The foreigners can not be obliged to lodge any security upon their capacity as foreign persons or absence of domicile or registered office in Romania**

Foreign individuals and legal entities are entitled to address themselves to the Romanian judiciary authorities and to promote their interests in the same conditions as Romanian persons.

In the same time, subject to reciprocity in the judicial treatment, foreigners (individuals) may benefit from free judicial assistance. Subject to the same reciprocity condition, foreign individuals and legal entities are exempted from lodging any security upon their capacity as foreigners or absence of domicile or registered office in Romania, this exemption being applied as well in case of lodging a security for guaranteeing trial expenses.

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