

AUGUST 2004

Number VIII

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**FISCAL CODE**

In the Official Gazette No. 793/2004 was published the Government Ordinance No. 83/2004 for the modification and completion of Law No. 571/2003 concerning the Fiscal Code ("GO No. 83/2004"). In accordance with the rules established at the moment of the approval of the Fiscal Code, The amended enactment shall enter into force at the beginning of the year following the one in which it has been adopted, respectively on January 01, 2005.

Among the main amendments and completions passed by the GO No. 83/2004 to the Fiscal Code are the following:

**Amendment of the definition for «affiliated persons» (regarding legal persons)**

As concerns the definition for «affiliated persons», no modifications have been brought concerning natural persons, as they are still considered as being relatives up to third degree inclusive. However, the new regulation brings amendments as regards the appreciation of the legal persons' affiliation.

Therefore, it is considered that a natural person is affiliated with a legal person or two legal persons are affiliated if their participation in a legal person, by direct or indirect holding, including holdings of the affiliated persons, is of minimum 25%.

**Amendment of the notion «real estate property»**

Following the Fiscal Code's amendment, it shall be considered real estate property any land, building or other construction erected or incorporated to a land.

Therefore, if compared to the previous definition it appears that have been excluded the references to crops, wood material, mineral deposits or other natural resources attached to the land, the subsidiary properties represented by live stocks and equipments used in agriculture and silviculture, the usage right or the right to obtain income from the real estate property.

**Definition of the notion «fiscal value»**

The notion «fiscal value» is now defined by the Fiscal Code provided that it represents (i) in case of assets and liabilities - the value of registration in the patrimony - for assets and liabilities, (ii) in case of participation titles - the acquisition or contribution value, (iii) in case of fixed assets - the cost, such as determined by the acquisition, production or market value cost, if such assets have been freely transmitted or have been subject to contribution when entering the taxpayer's patrimony - (iv) in case of commissions and reserves - the deductible value applicable when computing the taxable profit.

**Reduction of the profit tax quota**

The new enactment concerning the profit tax reduces the applicable quota from 25% to 19%.

**Exemption of the National Bank of Romania from the profit tax payment**

The National Bank of Romania has also been exempted from the payment of profit tax, (the previously applicable profit tax quota was of 80%).

**Deductible expenses for the insurance of employees' pensions**

The expenses incurred on behalf of an employee, as concerns the facultative schemes of occupational pensions and the expenses with the private health insurance premiums have been established as deductible up to the limit of an amount representing the ROL equivalent of 200 EURO, for a fiscal year, for each participant.

**Reduction of the facilities granted to certain investors**

Certain fiscal exemptions, which have been previously granted until June 30<sup>h</sup>, 2007, have been limited until December 31<sup>st</sup>, 2006. Such limitation regards the investors, which before July 1<sup>st</sup>, 2002, carried out investments in a free area, in tangible material assets used in the processing industry, with a value of at least 1,000,000 U.S.A. dollars

The exemption from the tax profit payment granted to the company Automobile Dacia

S.A., previously provided until October 01<sup>st</sup>, 2007, has been limited up to the same date.

**Modification of the thresholds for the income tax**

The annual thresholds for the income tax have been modified both in the sense of reducing the number of taxation thresholds, and as concerns the reduction of the taxation level.

Therefore, only three taxation thresholds have been established, respectively 14% for the incomes up to ROL 32,400,000, 26 % for what overpasses the amount of ROL 32,400,000 and 38% for what overpasses the amount of ROL 174,000,000.

**Maintenance of the level of personal deduction for 2005**

As regards the personal monthly base deduction for the fiscal year 2005 it has been maintained to the same level as applicable for the fiscal year 2004, respectively ROL 2,000,000. Such amount shall not be updated on the basis of the rate .

**Increase of the deductibilities for the presents offered to employees**

Presents offered by employers to the employees' children (under 18) shall be taxable only if exceeding the new ceiling of 1,500,000 ROL (previous threshold: 1,200,000). Such increase applies to presents offered on the occasion of Easter, June 1<sup>st</sup>, Christmas, March 8<sup>th</sup> and such similar feasts of other religious cults .

**Increase of the tax on dividends for natural persons**

The tax due by natural persons for the income as dividends, including the amounts received as a consequence of participation titles in the closed-end investment funds was increased from a quota of 5% to 10% of their amount.

The same quota of 10% shall be applied to the taxable income obtained from the winding up procedures without liquidating a legal person.

Such income is represented by the distributions in cash or in kind that overflow the contribution to the share capital of the natural person as beneficiary.

**Introduction of the reverse charge VAT for certain goods**

Several rules were instituted for the VAT payment, to introduce the «reverse charge», for operations carried out as concerns waste materials and remnants of ferrous non-ferrous metals, for the secondary raw materials resulted from their usage, as well as for lands and buildings or parts of buildings.

Therefore, in case the supplier and beneficiary are registered as VAT payers, the supplier shall mention on the issued invoices the mention «reverse charge». The parties shall accordingly register the afferent VAT in the sale and purchase journals at the same time and shall register it in the VAT deduction, both as a collected tax, and as a deductible tax, without effective payments

to be carried out between the two entities as concerns VAT.

**Modification of the excise taxes for certain products**

GO No. 83/2004 provides a reduction of the excise taxes of EURO 0.12/unit of measure for certain drinks, such as the beer produced by independent producers with a capacity of production that does not overpass 200,000 hectolitres, the frothy wines and the frothy fermented wines, others than beer and wines.

The minimum limit of excises for cigarettes shall be calculated by adding the amount between the specific excise and the ad valorem excise, but it should not be less than 11 Euro/1,000 cigarettes.

The excises for coffee were reduced as following: (i) for green coffee, from 850 EURO/ton to 680 EURO/ton, (ii) for roasted coffee, including for coffee with substitutes, from 1,250 EURO/ton to 1,000 EURO/ton and (iii) for the soluble coffee, including for mixtures with soluble coffee, from 5 EURO/kilo to 4 EURO/kilo.

**Authorisation for traders of alcoholic drinks and tobacco products**

The commercial entities that want to deliver and sell alcoholic drinks en gross and tobacco products have been obliged to register with the territorial fiscal authority, before March 31<sup>st</sup>, 2005.

These traders are also obliged to cumulatively meet the following conditions: (i) to hold appropriate depositing spaces, (ii) to register with the activity object of the trade activity and en gross distribution of alcoholic drinks or of the trade activity and en-gross distribution only of tobacco products and (iii) to hold necessary equipment in order identify the hunting of false or counterfeited marks in case of selling products subject to marking.

### PUBLIC PROCUREMENTS

The last revision of the legislation regulating the public procurement procedures has been performed by the means of the Government Ordinance No. 75/2004 ("GO no. 75/2004") for the amendment of the Emergency Government Ordinance No. 60/2001 ("EGO no. 60/2001") concerning the public procurement (published in the Official Gazette No. 774 as of August 24<sup>th</sup>, 2004).

These adjustments mainly regard the methods and cases for the price updating in public procurement agreements.

#### **Price updating in case of agreements concluded for less than 12 months**

As a general rule, in case of agreements whose performance should take less than or maximum 12 months, the price must remain unchanged (in ROL), during the entire duration of the agreement.

Nevertheless, parties may decide upon revising the price in situations solidly grounded, exceptionally, if such reasons have arisen during the duration of the agreement, they prejudice the commercial legitimate interests of the parties and they were not foreseeable upon the time of the conclusion of the respective agreement. In all situations, it may be revised only the price characteristics affected by changes.

Also, the general rule mentioned above shall not apply in case of the public procurement agreements financed/co-financed by EU or international financial bodies programmes.

Moreover, another exception regards procurements of fungible goods whose prices are set on the basis of quotations given by national/international stock-exchange bodies or regulatory authorities, as well as procurements of equipments, tools and services. The updating of the prices from the financial offer, in case of public procurements of equipments, tools and services must not determine the overpass of the price expressed in EURO at the time of submitting the offer.

#### **Price updating in case of agreements concluded for more than 12 months**

In case of agreements whose performance should last more than 12 months, the contracting parties are entitled to update the price of the agreement by addendum, for the rest to be further fulfilled, in order to protect it against the inflation.

In all cases, the updating of the price within procurement agreements may not be required as a consequence of exceeding of the contractual timing by the exclusive fault of the claimant party.

**Increase of the fines applied for contraventions. Ascertaining of contraventions**

GO No. 75/2004 also promotes some modifications as concerns the regime of the specific contraventions. Thus, the threshold of the applicable fines to be applied in case of non-compliance with the provisions of the EGO No. 60/2001 have been increased to a maximum of 75,000,000 ROL.

At the same time, the new wording of the legal texts acknowledges the competence of the Court of Accounts to ascertain and apply sanctions in the field of public procurements, such as regulated by the EGO No. 60/2001.

**CONSUMER PROTECTION**

In order to harmonize the Romanian legislation with the European provisions concerning the distance sale of the financial services to the consumers, the Romanian Government has passed the Ordinance No. 85/2004 ("GO No. 85/2004") concerning consumer's protection upon conclusion and performance of distance agreements pertaining to the financial services (published in the Official Gazette of Romania No. 796 as of August 27, 2004).

**Scope of application**

The GO No. 85/2004 regards the agreements concluded by distance sale system or a service supply system, organized by the supplier, which uses - before and upon conclusion of the agreement - one or more distance communication techniques (that do not require the simultaneous physical presence of the parties).

GO No. 85/2004 shall apply to the relationships between the financial services suppliers and the consumers. According to the above mentioned enactment, the financial services refer to banking, credit, individual pensions, financial investment services regulated by the Law No. 297/2004 on the capital markets or to any services related to the in-kind payment.

With respect to the persons defined as financial service suppliers, GO No. 85/2004 includes in this category the natural or legal person authorized according to the law to supply financial services, as defined above, within their professional or commercial activities. The consumer is regarded as the natural person who, with reference to the agreements regulated by GO No. 85/2004, acts beyond its professional, economic or commercial activity.

**The mandatory information prior to the conclusion of the agreement**

GO No. 85/2004 stipulates the obligation that the consumers must be provided with accurate and complete information, prior to the conclusion of the distance agreement or

upon submitting the offer. The information shall refer to the supplier's identity, the financial service to be supplied (including the total price to be paid and the methods of payment, the existence of certain special risks, the validity limit of the information), the existence of the unilateral termination or rescission rights and the related conditions for exercising such rights, possibilities for settlement of potential disputes.

The supplier must communicate to the consumer in writing and in due time all the terms and conditions of the agreement, before the consumer undertake obligations arising out of distance agreement conclusion or of the offer acceptance. The information may also be subsequent to the conclusion of the agreement, but only when, upon the express request of the consumer, the agreement has been concluded by using distance communication means that do not allow the performance of the prior information procedure. Moreover, during the performance of the agreement, the consumer is entitled to request to be informed in writing upon the contractual terms and conditions.

#### **Conclusion of the distance agreement**

As a rule, the distance agreement is deemed to be concluded at the moment when the confirmation message sent by the consumer with respect to its order is received by the financial service supplier. The parties have the possibility to derogate from this general rule.

#### **Unilateral termination of the distance agreement**

GO No. 85/2004 provides the consumer with an increased protection, by specifying extended unilateral termination and rescission rights.

The consumer has the possibility to unilaterally terminate the agreement within a limited period, no reason being necessary to be invoked and no penalty to be paid, by written notice sent to the supplier by any means that can be proved.

The unilateral termination of the agreement determine only the payment of the expenses related to the service already provided, except for the insurance agreements, whose termination does not cause the payment of any amount by the consumer.

However, the termination right shall not apply to the financial services whose price depends on the fluctuations of the financial market, as well as to other few limited situations provided by the law, inter alia, in case of credit agreements concluded with a view of acquiring or preserving the ownership right over a land or a construction or with a view of restoring or refurbishing a construction.

#### **Rescission of the distance agreement**

The consumer is entitled, in accordance with the GO No. 85/2004, to request the rescission of the agreement, without any payment of penalties or additional costs, in case the supplier has not fulfilled the

obligation to inform in writing the consumer upon the contractual terms and conditions.

**Mandatory application of the GO No. 85/2004**

The agreements for the supply of distance financial services may not include, even

with the express consent of the consumer, waivers to consumer's rights such as granted by the GO No. 85/2004. The rights granted by such enactment may not be eluded even by electing another governing law for the agreement, if the place of conclusion of the agreement is Romania.