

MARCH 2005

NUMBER III

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**FISCAL CODE****Government Emergency Ordinance no. 24/2005 amending the Law no. 571/2003 on the Fiscal Code**

Previously announced, new amendments to the Fiscal Code have been brought at the end of March, through GEO no. 24/2005, published in the Official Gazette no. 263/2005. Although the coming into force of the enactment has been set for April 1<sup>st</sup>, 2005, the majority of its provisions shall become effective at later dates, e.g. May 1<sup>st</sup> or June 1<sup>st</sup>, 2005, such as set forth below.

The main amendments to the Fiscal Code refer to: the increase of certain taxes, such as profit tax or capital gains tax, the setting of special rules pertaining to incomes from sale of real estate, changes concerning the VAT, as well as the increase of the main excise duties.

**Amendments concerning the profit tax**

According to the new enactment, the incomes from sale of real estate located in Romania or equity interest held in Romanian companies shall be subject to a 16% tax rate, starting with May 1<sup>st</sup>, 2005.

Other changes refer to the elimination of the facility under which tax payers could acknowledge incomes from instalments sale agreements at the moment such instalments were due, in the process of determining the profits subject to taxation.

Nevertheless, the companies having chosen to apply this fiscal facility until April 30<sup>th</sup>, 2005 shall continue to benefit from it, during the performance of the said agreements.

GEO no. 24/2005 also provides for the elimination of the 20% additional depreciation allowance for fixed assets or amortisable patents. However, tax payers shall continue to benefit from such incentive, under specific conditions, provided that they have deducted such expenses prior to April 30<sup>th</sup>, 2005.

**Tax increases**

As regards gains obtained from sale of shares, the tax rate applied as of May 1<sup>st</sup>, 2005 shall be 10% in case the shares have been hold for less than 1 year prior to the sale, respectively 1% if the sale took place after more than 1 year as of their acquisition.

The tax rate on income from interest shall increase to 10% as of May 1<sup>st</sup>, 2005. Notwithstanding, income from interest on demand deposits/current accounts shall be deemed non-taxable provided that the corresponding interest rate ranges within the average one-month interest rate used in transactions between financial entities (i.e. BUBID), valid on the first business day of the computation month.

The new enactment introduces the taxation of gains from currency transactions and any other similar operations, at a 10% rate.

According to GEO no. 24/2005, the withholding tax due by non-residents for interest on deposit accounts, deposit

certificates and other saving instruments issued by banks and other credit institutions authorized and located in Romania shall double as of May 1<sup>st</sup>, 2005, from 5% to a 10% rate.

#### **Fiscal treatment of incomes from sale of real estate**

Other new provisions refer to the setting of new fiscal rules regarding incomes from sale of real estate. In this respect, GEO no. 24/2005 provides that, with some exceptions, the tax on gains from such transactions, set at 10% (16% as of January 1<sup>st</sup>, 2006) shall be calculated, withheld and paid to the state budget by the public notaries upon authentication of *inter vivos* transactions.

In case the ownership transfer is not performed through the notary public, the tax payer shall be compelled to declare the gain derived from the operation to the competent fiscal authorities (based on the real estate location), within 3 days as of the date of the transaction.

#### **Changes regarding VAT**

As per the new enactment, some operations shall no longer be VAT exempted starting June 1<sup>st</sup>, 2005.

Such operations include: the sale of licenses for films or programs, broadcasting rights, import of carrier media, such as films,

magnetic tapes and disks containing recordings of films or programs intended for radio or television activities, save for advertising purposes, and, generally, operations falling within the area of the show tax.

#### **Increases of the level of the excise duties**

As a general principle, GEO no. 24/2005 increases the level of excise duties for: alcohol, tobacco, mineral oil, cars and luxury products. Furthermore, starting April 1<sup>st</sup>, 2005, electricity, crude oil and natural gas used for commercial purposes shall be subject to excise duties.

It is worth mentioning that the following products shall no longer be exempted from excise duties: mineral oils used in household heating, or alcohol based products used, for example, in the cosmetics industry or in certain manufacturing operations.

#### **Amendments to leasing**

The new enactment provides that, for new or second-hand cars imported in Romania after the coming into force of GEO no. 24/2005, based on leasing agreements, the taxable basis for excise duties shall be the entry value of such goods plus customs duties and other special duties, as the case may be, due for payment upon closing of the import operation.

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