

JULY 6, 2010

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**1. Government Emergency Ordinance no. 58/2010 regarding the amendments to the Fiscal Code and other financial and fiscal measures**

**Reassessment of independent activities**

The frame of dependent activities becomes wider, taking into consideration that any activity, irrespective of its fiscal current classification, could be reassessed and deemed as dependent activity. Thus, based on at least one of several criteria (mostly similar to the existing ones set out in the Norms), the activity of freelancers could be re-qualified and the income received may be assimilated with salary income and taxed accordingly.

Such criteria include: (a) the income beneficiary is under a relationship of subordination with the income payer, observing the work conditions imposed by the latter; (b) the income beneficiary uses the material basis of the income payer; (c) the income beneficiary contributes only with physical or intellectual performance, not with own working capital; (d) the income payer bears the travel expenses for business purposes of the income beneficiary, as well as the indemnity for vacation and for temporary incapacity of work.

**Attention!** Should an activity be reassessed as dependent, both the income beneficiary and the payer of

income shall be held jointly liable for the income tax and all related social contributions which are due for the salary income.

**Tax on dividends**

The tax rate is increased from 10% to 16% in case the dividends are paid by a Romanian legal entity to another Romanian entity. The current exemption is maintained if the conditions of the Parent Subsidiary Directive (i.e. minimum 10% shareholding for a period of at least 2 years at the dividend payment date) are met.

**Attention!** The exemption is now applied also to dividends paid to optional pension funds or private pension funds.

**Corporate income tax**

Tax credit is available, based on proper documentation attesting the tax payment in the foreign jurisdiction, only if a Convention for the avoidance of double taxation can be claimed.

**Attention!** Romanian legal entities obtaining income from a foreign state can no longer claim the deduction of the taxes paid in that state based on the Romanian Fiscal Code provisions.

The offset of foreign tax losses is applied differently depending on the location of the permanent establishment. Thus, if the permanent establishment is located

in a state other than those members of the EU/EFTA or located in states with which Romania concluded Conventions for the avoidance of double taxation, the loss can be offset only against income generated by the respective permanent establishment. Conversely, although not expressly mentioned, it results that for the other cases, the offset can be achieved in Romania.

**Attention!** A more favourable regime is introduced for permanent establishments situated in the EU/EFTA states or in states with which Romania concluded Conventions for the avoidance of double taxation.

### Personal income tax

The application of the 16% tax rate is extended to incomes that previously were exempt or were taxed at a lower rate:

- in case of income derived from intellectual property rights, the deductible lump sum expenses are decreased to 20% (from 40%), respectively to 25% (from 50%) for monumental works of art;
- 16% tax on interest derived from current accounts, deposits, saving instruments;
- 16% tax on gains obtained from trading shares on a stock exchange, irrespective of the holding period; net annual losses can be carried forward over a seven-year period; quarterly compliance required for trading shares on a stock exchange;
- 16% tax on gains derived from forward forex and similar contracts;
- 16% tax on severance payment;
- 16% tax on gift, nursery and holiday vouchers and meal tickets;

- 25% tax on gambling gains (flat rate);
- a minimum level of the fixed taxable income (i.e. minimum gross salary multiplied by 12) is set up when determining the annual net income from independent activities.

### Tax on income obtained by non-resident individuals

Income derived by non-resident individuals from dependant activities performed in Romania is taxed from the beginning of his/her activity in Romania. The conditions for exemption (i.e. at least one of the following: (i) the non-resident person is present in Romania for a period/periods exceeding 183 days in any 12 consecutive months, ending in the respective calendar year; (ii) the costs are paid by or on behalf of a resident employer; (iii) the costs represent a deductible expense of a permanent establishment) were repealed under the Fiscal Code.

**Attention!** The exemption could still be obtained, based on the Conventions for the avoidance of double taxation, if a valid certificate of tax residence is available and if the conditions are met.

### VAT

Starting with July 1, 2010, the VAT standard rate of 19% is increased to 24%.

The reduced rates of 5% and 9% remain valid.

### Other provisions

Any professional income, other than salary, is subject to individual social contributions (i.e. pension, health and unemployment contribution). The taxable base is capped at five times the gross national average salary, as provided by the Social Security Budget

Law. The liability to declare, compute, withhold and pay the social contributions stays with the income payer.

It is expected that the Ministry of Finance will provide more details regarding the payment of social contributions. Currently, considering the provisions of the laws that specifically regulate social contributions, as well as practical aspects of the matter, an accurate implementation of such provisions stipulated by Emergency Ordinance no. 58/2010 may prove very difficult.

**2. Government Emergency Ordinance no. 54/2010 regarding certain measures on the fight against fiscal evasion**

**VAT - New registration obligations**

Starting with 1 August 2010, the Registry of Intra-Community operators (ROI) will be set up.

All taxpayers who intend to carry out intra-community transactions must apply for registration in the ROI, before carrying out such transactions. The requirement applies to all such taxpayers, even if they are already registered for VAT purposes.

**Attention!** The deadline for submitting the registration request for taxpayers, who are already VAT registered in Romania, is 31 July 2010.

The forms and registration procedure are set out by Order no. 2101/2010. The criminal records of all shareholders (except for joint stock companies) and administrators issued by the competent authority in Romania, as well as form 095 (Registration/De-registration form) are to be submitted.

**Attention!** Persons not registered with ROI do not have a valid code for intra-

community operations, even if they are registered for VAT purposes. Failure to register with ROI may lead to a double taxation.

The reverse charge mechanism will apply in case of domestic supplies of cereals, industrial-use plants, vegetables, fruits, meat, sugar, flower, bread and bakery products between taxable persons.

**Attention!** This provision enters into force starting from the 10th day following the day the Council of the EU approves the derogation. The Ministry of Finance will publish the approval on its site ([www.mfinante.ro](http://www.mfinante.ro)).

**Excise Duties**

Several provisions of the Fiscal Code regarding excise duties were amended or introduced, among which:

- the validity period of the licence for fiscal warehouse keeper is of 3 years for medium and large taxpayers and 1 year for the others;
- new regulations (a maximum number of fiscal warehouses available) with respect to storage of excisable goods under suspensive regime;
- new excise duties values/calculation methods were introduced;
- the sale of tangible assets which directly contribute to the production/storage of excisable products by an authorised warehouse keeper, or by such keeper whose licence was cancelled/revoked can be achieved only after the payment of all due taxes or if the new owner assume the payment liability;

- the transfer of shares by an authorised warehouse keeper or by such keeper whose licence was cancelled/revoked shall be announced to the competent authority at least 60 days prior to

the day the operation takes place (except the case when the transfer takes place on a capital market), in order for a tax audit to be performed.