

JANUARY 4, 2011

NUMBER 1

**Emergency Ordinance no. 117/2010  
for the amendment of Law no.  
571/2003 regarding the Fiscal Code  
and other financial-fiscal measures<sup>1</sup>**

## I. Amendments to the Fiscal Code

### Social charges

The following contributions have been included in the Fiscal Code:

- a) employers' and employees' social security contribution;
- b) employers' and employees' health insurance contribution;
- c) employers' and employees' unemployment contribution;
- d) contributions for the sick leave indemnity;
- e) contributions for work accidents and professional diseases;
- f) contributions to the salary guarantee fund.

**Attention!** Social contributions applicable on freelancers' income based on self-assessment are not regulated by the Fiscal Code.

*Taxable base for social security contributions*

The taxable base for social security contributions (pension) is capped at five times the average monthly salary established for social security purposes

(for 2011, RON 2,022). This cap is applied individually for each source of income.

*Health insurance contribution on pension income*

Pension income above RON 740 (with no deductions) is subject to health insurance contribution, but the resulting net income cannot be less than RON 740.

*Non-taxable income*

Certain benefits in kind (like the personal use of company assets, goods and services at preferential prices) are not included in the taxable base for social contribution purposes.

**Attention!** Whereas such benefits are not included in the taxable base for social contribution purposes, they are still subject to personal income tax.

*Declaration obligations*

Employers and entities assimilated to employers are liable to submit a declaration regarding the social contributions due, the income tax, as well as a nominal list of the insured persons by the 25<sup>th</sup> of the following month. This statement should be submitted electronically, but until June 1, 2011 hard copy statements (accompanied by e-format) are accepted as well.

In addition, these entities must submit an inventory-statement regarding the health insurance and sick leave

contributions as of December 31, 2010, still outstanding by January 31, 2011, as well as a break-down of the related late payment interest and penalties.

**Attention!** The inventory-statement should be submitted by February 15, 2011. Although not specifically mentioned, the submittal of this statement entails recognition of the outstanding liabilities and will re-start the statute of limitation period.

### Personal income tax

#### *Independent activities*

The non-deductibility of fuel expenses for certain passenger cars has been extended to December 2011 (previously December 2010).

Taxpayers obtaining income from independent or agricultural activities, which cease or temporarily suspend their activity, are liable to submit a declaration to the tax authorities within 15 days from the date such events have occurred. This declaration should be accompanied by supporting documents and will be used by the tax authorities in order to reassess the advance payments due.

For taxpayers who obtain income from independent activities, agriculture activities and rent-out of real-estate, the assessment declaration is replaced by the declaration regarding the realized income (reverting to system applicable until year-end 2009). The submission deadline is May 15 of the year following the one the income refers to. An assessment notice will be issued by the tax authorities and the related tax becomes due within 60 days from the date the assessment notice is communicated by tax authorities.

The above provisions are applicable starting with the declaration to be submitted for the 2010 income.

#### *Income obtained from abroad*

Fiscal losses obtained from abroad from transfer of securities, other than shares in non-listed entities, can be carried forward for a period of 7 fiscal years and are available to be off-set against income with the same nature and the same source, in the same country.

Income obtained from abroad should be declared to the tax authorities by May 15 of the following year at the latest (instead of May 25). An assessment notice will be issued by the authorities and arising tax liabilities should be settled within 60 days from the date the notice is communicated.

The above provisions are applicable starting with the declaration to be submitted for the 2010 income.

#### *Other provisions*

Income identified by the tax authorities, whose source has not been identified, is subject to the 16% tax rate. This is applicable starting with income derived in 2011.

### Corporate income tax

The non-deductibility of fuel expenses for certain passenger cars has been extended to December 2011 (previously December 2010).

For the purpose of recovering the past fiscal loss, the period October 1 - December 31, 2010 will be considered as a separate fiscal year.

### Microenterprise regime

The micro-enterprise regime has been reinstated, similar to the one in force prior to 2010. Companies which opt for this regime are subject to 3% turnover tax, instead of 16% corporate profits tax.

Companies performing activities consisting of consultancy and

management are not eligible for this regime.

Specifically for 2011, companies shall qualify for this regime even if they have benefitted of the microenterprise status in the past, as long as they meet the other criteria as of year-end 2010.

**Attention!** This provides an opportunity for companies which had this status in the past and lost it due to exceeding the turnover threshold, or any other of the qualifying criteria. A notification must be submitted by January 31 at the latest in order to opt for the regime.

#### **Dividend withholding tax**

The withholding tax applicable on dividends distributed by a Romanian entity to a shareholder who is either a resident or a permanent establishment of a company resident in another member state, respectively Iceland, Lichtenstein or Norway is increased from 10% to 16% (provided that the criteria for the Parent-Subsidiary Directive is not met).

#### **VAT**

##### *Heath and cooling energy*

Taxation rules similar to the ones for electricity and natural gas delivered through distribution networks are also introduced for heath and cooling energy delivered through heating and cooling networks.

##### *Taxation of services*

Services supplied to taxable persons related to granting of admission to cultural, artistic, sporting, scientific, educational, entertainment and cultural events and of services ancillary to admission remain taxable at the place where the events actually take place.

All other services supplied to taxable persons in connection to cultural,

artistic, sporting, scientific, educational, entertainment and cultural events become taxable at the place where the beneficiary of the service is established.

Use and enjoyment rules have been introduced for transport services performed outside the Community, which are rendered to taxable persons established in Romania. As such, such services are no longer taxable in Romania if the place of departure and the place of arrival are both situated outside the Community.

##### *Exchange rates*

In case of adjustments to the taxable base (ex: price adjustments, refused goods), the same exchange rate should be used as the one valid when the tax point for the initial transaction occurred.

##### *VAT exemptions*

Goods imported by certain European bodies are VAT exempt. The sale is valid for deliveries of goods towards such bodies.

Import of gas brought by vessels and destined to be fed into distribution networks is VAT exempt.

##### *Deductions*

The non-deductibility of VAT related to the acquisition of certain passenger cars, as well as the related VAT on fuel has been extended to December 2011 (previously December 2010).

The conditions are mentioned in which a taxable person can deduct input VAT for goods acquired as part of a forced execution process from companies which are temporarily or indefinitely inactive.

##### *VAT registration*

Criteria can be established through special Orders in order to assess the viability of a VAT registration request.

*Special regime for small enterprises*

Entities whose registration was cancelled by the tax authorities cannot benefit of the small enterprise regime.

Taxable persons which are registered for VAT purposes, which perform transactions under the exemption threshold, have the possibility to switch/revert back to the small enterprise exemption regime.

**Attention!** The option must be notified by January 20 of the following year and is valid as of February 1st.

*Simplification measures*

The transfer of gas emission certificates is subject to the reverse-charge mechanism.

**Excise duties***Tobacco products*

Some changes were brought to the definition of cigars, loose Tobacco to be rolled in cigarettes, as well as the criteria in which a tobacco roll will be considered as two or three cigarettes for excise duty purposes.

The excise duty exemption for processed tobacco destined exclusively for scientific experiments and testing of product quality is removed.

The economic operators who are liable to excise duties for processed tobacco must submit to the authorities lists containing information on the excisable products released for consumption, in accordance with details to be provided in the Norms.

Confiscated tobacco can also be released into the custody of entities which are related parties to warehouse keepers authorized for the production and storage of processed tobacco (provided that the warehouse keeper has a market share of minimum 5%).

The level of the excise duty for cigarettes is increased.

*Petroleum products*

The excise duties for unleaded gasoline and diesel fuel are decreased.

*Coffee*

The excise duties on all types of coffee are not removed starting 2011 (as prior legislation indicated). The same duty rates in force for 2010 are valid for 2011 as well.

Other amendments are brought in the contraventions and criminal offence sections.

## **II. Amendments to Emergency Ordinance no. 58/2010 regarding the amendment of the Fiscal Code**

Losses incurred in the period January 1 – June 20, 2010, from the transfer of securities (other than social parts and titles in non-listed companies) can be offset against gains from the period July – December 2010. Any outstanding balance can be carried forward in 2011 solely.

Fiscal losses arising in the period July – December can be carried forward for a period of 7 years.

## **III. Amendments to Emergency Ordinance no. 77/2009 regarding the gambling activity**

Entrance tickets must be paid for casino-types activities as well as for playing slot machines.

**IV. Amendments to Ordinance no. 92/2003 regarding the Fiscal Procedure Code**

In situations where there is a significant discrepancy between the income and the spending of an individual, tax authorities may investigate the accuracy of the income declared. Tax audits will be announced with 60 days in advance and a delay of an additional 30 days may be requested once. By significant discrepancy it is to be understood a difference of 10%, but no less than RON 50,000.

The legislation also mentions indirect methods for determining the actual position of private individuals.

**V. Amendments to Emergency Ordinance no. 158/2005 regarding health insurance contributions**

Employers and entities assimilated to employers are liable to submit a copy of the medical certificates to the Health Insurance House only if they claim the reimbursement of the sick leave indemnity paid to their employees.

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<sup>i</sup> Published in Official Gazette no. 891/2010