



PACHIU & ASSOCIATES
ATTORNEYS AT LAW

LEGAL UPDATE

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Special points of interest:

- New amendments of the Fiscal Code
- Amendment of the Accounting Law

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TAXATION

Government Ordinance No. 83/2004 amending and supplementing Law No. 571/2003 - the Fiscal Code was published in Official Gazette No. 793 of August 27, 2004

1. Profit Tax

Ordinance No. 83/2004 (hereinafter the „**Ordinance**”) amends the definition of affiliated entities. For the purpose of an affiliation relationship between a legal entity and another legal entity or natural person, the latter must hold at least 25% of the share capital of the legal entity to which it is affiliated (as compared to 33%, as provided by the initial version of the Fiscal Code).

The standard rate of profit tax is decreased from 25% to 19%.

If the indebtedness ratio of the capital is higher than one, respectively three, the expenses with interests and the net loss from the currency exchange difference shall be considered as non-deductible and shall be reported in the following fiscal period.

A major amendment concerns the taxation of capital gains obtained by legal entities from the sale/assignment of real estate located in Romania or shares in a Romanian company. Such capital gains are subject to 10% taxation rate, if the taxpayer held the real estate or the shares for a period exceeding two years and the person who acquires the real estate or the shares is not an affiliate of the taxpayer (cumulative conditions). The requirement that the real estate or the shares are

purchased by the taxpayer after December 31, 2003 is abrogated.

2. Tax on Income

The Ordinance amends the annual taxation thresholds for anticipated payments and the monthly thresholds for the monthly salaries and pensions taxes, as well as the value of the income tax. In case of annual revenues up to ROL 32,400,000, the taxation rate shall be 14%; for annual incomes exceeding ROL 174,000,000, the taxation rate shall be 41,352,000 + 38% of what exceeds ROL 174,000,000.

Also explicitly provided is the fact that the compensations for directors as well as the amount of the net profit to which directors are entitled in compliance with the Articles of Incorporation or the Resolution of the General Assembly of Shareholders, represent incomes assimilated to salaries and shall be subject to taxation in compliance with the same limits.

Incomes under the form of dividends obtained by taxpayers natural person shall be subject to 10% withholding tax (as compared to 5%, until the enforcement of the Ordinance).

According to the Ordinance, in case of sale of

shares or securities with payment of the price in installments, the payment term for the capital gain tax shall be until the 25th day, inclusively, of the month following the one in which the tax was withheld. The transfer of the ownership title over shares or securities shall not be registered with the Register of Commerce and the Shareholders' Register without a proof of payment of the capital gain tax to the State budget.

Incomes from liquidation or dissolution without liquidation of the legal entity are also included in the category of incomes from investments, such being subject to a taxation rate of 10%.

3. Value Added Tax

The Ordinance provides „simplified measures” for VAT payment. Therefore, for the delivery of ferrous metal waste, as well as land, buildings or parts of buildings, the suppliers shall mention „reverse taxation” on the issued invoice and shall mention the VAT both as a collected and deductible tax, without effective VAT payment between the supplier and the beneficiary.

The implementation Rules for VAT exemption in customs for certain imports

Order No. 1.219/2004 approving the implementation Rules of the procedure of granting certificates for VAT exemption in customs for imports provided by Article 157 para. (3) of Law No. 571/2003 on the Fiscal Code was published in Official Gazette No. 737 of August 16, 2004.

In compliance with Article 157 para. (3) of Law No. 571/2003, on the Fiscal Code the persons registered as VAT payers who obtain the exemption certificates for the imports of certain goods (industrial machines, technological equipment, installations, raw material, etc) shall not make the effective payment with the customs authorities.

The VAT exemption certificate shall be issued by the fiscal authority located in the territorial unit where the importer is registered as tax payer.

The value of imports mentioned in the exemption certificates shall not comprise the customs duties and the customs commissions.

The customs authorities shall grant the exemption from VAT payment in customs not only for the value mentioned in the exemption certificates, but also for the entire taxation base for imports of goods governed by the provisions of Article 139 of Law No. 571/2003 on the Fiscal Code.

An importer may obtain one or more exemption certificates for VAT exemption

in customs during a fiscal year.

On the date of entering into force of the implementation Rules, Order No. 1.844/2003 approving the Rules on the procedure of granting of the exemption certificates for VAT exemption in customs for imports provided by Article 157 para. (3) of Law No. 571/2003 on the Fiscal Code shall be abrogated.

BANKING

National Bank of Romania Norms No. 8/2004 on the amending and supplementing of National Bank of Romania Norms No. 13/2002 regarding the minimum capital of credit co-operatives and the minimum aggregate capital of credit co-operative networks was published in Official Gazette No. 747 of August 17, 2004.

The value of the minimum amount of the capital and own funds of a central house of credit co-operatives was increased to the ROL equivalent of EUR 5 million. The minimum aggregate capital of a credit cooperative network was increased to the ROL equivalent of EUR 10 million.

The aforementioned thresholds must be observed until July 1, 2006.

National Bank of Romania Norms No. 7/2004 on the authorizing of credit co-operatives was published in Official Gazette No. 797 of August 30, 2004.

The norms provide for the authorizing procedure of the credit co-operatives, the conditions, the terms and documents which must be submitted to the National Bank of Romania for obtaining the authorization.

Regulations regarding credit co-operatives



Circular No. 18/2004 of the National Bank of Romania regarding the reference interest rate for August 2004 was published in Official Gazette No. 716 of August 9, 2004.

The reference interest rate established by the National Bank of Romania for August 2004 is 20.29 % per year, lower by 0.46 points than the rate established for July 2004.

The reference interest rate for August 2004

Circular No. 20/2004 regarding withdrawal from circulation and cessation of circulation of the bill of ROL 2,000 – the 1999 emission, engraved on the polymer support was published in Official Gazette No. 781 of August 25, 2004.

The National Bank of Romania shall withdraw from circulation the bill with the nominal value of ROL 2,000 – the 1999 emission, engraved on the polymer support starting with September 1, 2004.

The withdrawal from circulation of the ROL 2,000 bill

After November 30, 2004 the circulation of the bill of ROL 2,000 shall cease.

ACCOUNTING

Government Ordinance No. 94/2004 providing for certain financial measures was published in Official Gazette No. 803 of August 31, 2004.

The amendments refer to the situations when legal entities may perform payments in cash.

The maximum amount which may be paid in cash by the legal entity is ROL 100,000,000 per day. The payment to a single legal entity shall be permitted only in the limit of the amount of ROL 50,000,000, excepting pay-

ments to Cash & Carry stores which may not exceed ROL 100,000,000 per day

The amount in cash which may be kept in the legal entity's cash register should not exceed the amount of ROL 50,000,000 at the end of the day.

Amendment of Government Ordinance No. 15/1996 regarding the consolidation of the currency – financial discipline

Government Ordinance No. 70/2004 amending and supplementing Accounting Law No. 82/1991 was published in Official Gazette No. 773 of August 24, 2004.

The annual financial statements must be accompanied by a statement issued by the director, the credit authorizing officer or the person in charge with the management of the legal person, who must certify that:

- the accounting policies used for the drafting of the annual financial statements are in compliance with the applicable accounting regulations;
- the annual financial statements present an accurate image of the financial position and other financial information regarding the activity of the legal person;
- the activity of the legal person is uninterrupted.

The legal persons who have the obligation to use the combined accountancy system must publish their annual financial

statements, the director's report and the auditors' report. These provisions apply also to branches opened in Romania by foreign companies.

The terms for registering the annual financial statements with the fiscal authority were extended to 150 days as of the end of the financial year, for legal entities who apply accounting regulations compliant with the International Financial Reporting Standards, 120 days for other legal persons except legal entities who did not develop activity since incorporation - for such entities the legal term is 60 days.

The penalties for minor offenses were increased up to ROL 300,000,000. The ordinance also provides that the turnover of the company is a criterion for establishing the amount of the penalty.

Amendments of the Accounting Law

INCORPORATION

Government Ordinance No. 72/2004 amending Article 39 of Law No. 26/1990 on the trade register was published in Official Gazette No. 791 of August 27, 2004.

New amendments of Law No. 26/1990

According to the new amendment of the Law regarding the trade registry, the registration of a company name which contains the expression “academic-scientific”, “academy”, “university”, “school” and their assimilated words is forbidden.

The registration of a company name which contains the words or expression “national”, “Romanian”, “institute”, and their assimilated

words or expressions used for public authorities and central public institutions, the approval of the Government General Secretary shall be necessary.

The registration of a company name which contains a word or expression typical for public authorities and local public institutions shall be performed only with the approval of the prefect from the territorial unit where the company established its headquarters.

In case the name of the companies registered prior to the date of entering into force of such provisions contain the words or expressions “academic-scientific”, “academy”, “university”, “school” and their assimilated words, the legal entity shall change the company name within three months as of the date of entering into force of such provisions.

SOCIAL SECURITY

The implementation Rules regarding the granting of credits from the unemployment insurance budget in advantageous conditions, respectively non-reimbursable funds, to small and medium size enterprises, cooperative units, family associations and natural persons which perform economic activities independently was published in Official Gazette No. 706 of August 5, 2004.

Credits from the unemployment insurance budget

The Labor, Social Solidarity and Family Ministry and the National Bank of Romania issued the implementation Rules for the purpose of governing the conditions of granting and reimbursement of credits in advantageous conditions and granting of the non-reimbursable funds from the unemployment insurance budget.

The beneficiary of credits granted in advantageous conditions are:

- small and medium size enterprises;
- handicraft coopera-

tives and consumption cooperatives;

- family associations;
- natural persons carrying on economic activities independently;
- unemployed workers who undertake the obligation to establish small and medium size enterprises, cooperative units, family associations or to become natural persons carrying on economic activities independently;
- persons under the age of 30 who are students for the first time in

daily courses.

The Rules also provide the procedure for the appointment of a bank or an authorized agency to grant credits in advantageous conditions, respectively non-reimbursable funds from the unemployment insurance funds, as well as the conditions of granting, use of such credits and funds and establishing guarantees.

On the date of entering into force of such provisions, implementation Rules No.394/2002 shall be abrogated.

COMPETITION

Government Ordinance No. 94/2004 providing for certain financial measures was published in Official Gazette No. 803 of August 31,

According to the new amendment of the Law on the state aid, the state aid granted to individual consumers and the state aid granted in case of natural calamities and unpredicted events shall be considered compatible with the regular competition environment and shall be notified to the Competition

Council.

The Competition Council shall analyze if such aid is granted to the individual consumers without discrimination regarding the origin products or services or such aid leads to elimination of the effects caused by the natural calamities or unpredicted events.

***Amendment of
Law No. 143/1999
on the state aid***

PUBLIC ACQUISITIONS

Government Ordinance No. 75/2004 amending Government Emergency Ordinance No. 60/2001 on public acquisitions was published in Official Gazette 774 of August 24, 2004.

According to G.O No. 75/2004, the bidder has the obligation to express the price of the financial offer not only in ROL, but also in EURO.

The ordinance also provides that exceeding of the contractual terms by exclusive fault of the

contracting authority may not be invoked as a reason for updating of the price of the contract.

The ordinance establishes increased penalties for minor offenses.

***The amendment of
the Ordinance on
public acquisitions***



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