



PACHIU & ASSOCIATES
ATTORNEYS AT LAW

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Special points of interest:

- **Amendment of Fiscal Code**
- **Pension funds under private administration**
- **Advertising and sponsorship of tobacco products**

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TAXATION

Amendments to the Fiscal Code

Law No. 494/2004 approving Government Ordinance No. 83/2004 amending and supplementing Law No. 571/2003 on Fiscal Code was published in Official Gazette No. 1.092 of November 24, 2004.

According to the new amendments, fiscal authorities may not consider a transaction performed by a taxpayer declared inactive by order of the president of the National Agency for Fiscal Administration.

Moreover, fiscal bodies may not consider transactions performed with a taxpayer declared inactive by order of the president of the National Agency for Fiscal Administration. The procedure of declaring a taxpayer inactive shall be established under an order. The list of taxpayers declared inactive shall be published in the Official Gazette of Romania, Part I, and shall be made public.

Assignment or alienation under any form of shares shall not be permitted, except for those making the object of capital market transactions or stock or fixed assets of taxpayers, without notifying the competent fiscal authorities, for the purpose of performing fiscal-financial verification, at least 60 days prior to completing the assignment or alienation operation.

Interest expenses shall be fully deductible in case the indebtedness of the capital is less than or equal to three.

If the indebtedness degree of the capital exceeds three, interest expenses and net loss from exchange rate differences shall not be deductible.

Until January 1, 2007 fiscal banderoles for alcoholic beverages shall be issued only if the manufacturer attests to payment to the state budget of an equivalent of excises corresponding to the quantity of products whose marking was requested.

Any delay in payment of excises exceed-

ing 5 days as of the due date shall result in suspension of the license of the holder of the fiscal warehouse and of its activity prior to payment of the outstanding amounts.

As regards the tax on buildings, for public or private buildings in the property of the State or the territorial-administrative units, assigned, subject to concession, given in administration or use, as applicable, tax on buildings shall be the fiscal charge of the concessionaires, tenants, holders of the administration or use right, as applicable.

Such provisions shall also apply to public or private land in the property of the State or the territorial-administrative units which are assigned, subject to concession, given in administration or use.

The assignment or alienation under any form of shares, except for those subject to transactions on capital markets or stock or fixed assets of taxpayers, without notifying the competent fiscal authorities, for the purpose of performing fiscal-financial verification, at least 60 days prior to completing the assignment or alienation operation shall be construed as an offense.



Resolution No. 1.840/2004 amending and supplementing the Implementation Rules to Law No. 571/2003 regarding Fiscal Code, approved under Government Resolution No. 44/2004 was published in Official Gazette No. 1.074 of November 18, 20004.

**Amendments to the
Implementation Rules
of the Fiscal Code**

The fiscal authorities in Romania may, for the purpose of determining the fiscal obligation of affiliates, to reconsider the records of an affiliate in Romania, for the purpose of its fiscal verification, if prior to special relationships between the Romanian and foreign affiliate such records do not reflect the real taxable profit obtained in Romania.

If Romania concluded a convention for avoidance of double taxation with the state of the resident foreign affiliate, such reconsideration of the records for the purpose of fiscal verification shall be performed by the Romanian authorities by corroboration with the "Amicable Procedure" provided in such convention.

The following method

may be used upon estimating the market price of the transaction:

- price comparison method;
- cost-plus method;
- resale price method;
- any other method recognized in the guidelines regarding the transfer prices issued by the OECD.

If a taxpayer grants a loan (credit) to an affiliate or if such affiliate receives a loan (credit), regardless of its purpose or destination, the market price for such service shall consist of the interest that would have been agreed by independent persons for such services supplied under comparable terms, including the credit, respectively the loan administration charge.

Upon reporting the loan terms, the interest applied by an independent person un-

der comparable terms and in the same currency area shall be consider.

Income obtained in Romania by non-residents from transactions with derivative financial instruments, in compliance with the bank law, shall not be listed in the category of taxable incomes provided at Art. 115 of the Fiscal Code.

In the Certificate for fiscal residence or in the document by which the fiscal residence is certified forwarded by non-residents who obtained income in Romania, proof shall be provided that they were residents in the year during which they obtained income in the states with which Romania concluded conventions for avoidance of double taxation.

Law No. 450/2004 ratifying the Convention between Romania and Canada for avoidance of double taxation and prevention of fiscal fraud regarding income tax and capital tax, signed in Ottawa on April 8, 2004 was published in Official Gazette No. 1.043 of November 11, 2004.

**Double taxation
treaties**

Law No. 449/2004 ratifying the Convention between Romania and Republic of Estonia for avoidance of double taxation and prevention of fiscal fraud regarding income tax and capital tax, signed in Bucharest on October 23, 2003 was published in Official Gazette No. 1.126 of November 30, 2004.

Law No. 448/2004 ratifying the Convention between Romania and Republic of Ethiopia for avoidance of double taxation and prevention of fiscal fraud regarding income tax and capital tax, signed in Bucharest on November 6, 2003 was published in Official Gazette No. 1.057 of November 15, 2004.

SOCIAL SECURITY

Law No. 411/2004 regarding pension funds under private administration was published in Official Gazette No. 1.033 of November 9, 2004.

The purpose of the system of pension funds under private administration is to secure a private pension which is distinct and additional to the pension granted by the public system, based upon collection and investment, to the benefit of participants, of part of the individual social security contribution.

The resources of the pension fund shall be established from the amounts obtained from contributions of the participants and amounts resulting from their investment.

A pension fund shall have a minimum of 50,000 participants.

Such provisions shall not apply for the period of the first three years as of the date of establishment of the pension fund.

The pension fund shall be established under civil society contracts concluded between a minimum of 100 founding members.

Pension funds cannot be declared bankrupt.

Persons up to the age of 35 becoming for the first time mandatory insured persons and making their contributions to the public pension system shall participate in the pension fund.

Persons up to the age of 45, who are already insured and make their contributions to the public pension system, may participate in a pension fund.

A person shall not participate in several pension funds at one time and shall hold only one account with his/her pension fund.

A person becomes a participant in the pension fund upon signing of an individual joining document, by free initiative or following distribution by the institution of record.

After joining or distribution, the participants shall contribute to the pension fund and shall not withdraw from the system of pension funds under private administration for the entire term during which he/she owes social security contributions to the public pension system, until commencement of the right to private pension.

Rights of participants may be transferred in other countries of domicile or residence, in compliance with the international agreements and conventions signed by Romania, in the currency of the relevant country or in

another currency agreed upon.

The participant whose net personal asset is not enough to secure a minimum private pension shall receive a sole payment or payment in installments for a term of a maximum of 5 years, upon request.

The contribution to the pension fund shall be part of the social security individual contribution owed to the public pension system and shall be established and transferred under the same terms as provided for the social security contribution.

The minimum share capital required for the administration of a pension fund is the equivalent in ROL calculated at the exchange rate of the National Bank of Romania at the date of establishment, of the amount of EUR 5 million.

The participants have the right to a private pension as of the date of fulfillment of the conditions for retirement for age limit in the public system.

At the date of commencement of the right to a private pension, the amount to which the participants are entitled shall not be lower than the amount of the paid contributions, adjusted with the consumption price index at the date of payment of the relevant contribution and the date of retirement, of transfers of available funds and their accessories, diminished with the transfer penalties and the legal commission.

The rights acquired by the participants and beneficiaries in the system of pensions under private administration shall be secured by using the pension security fund.

The pension security fund shall be financed from contributions made by the administrators, as well as from income obtained from their investment.

This law shall become valid as of July 1, 2006.

Pension funds under private administration

BANKING

Law No. 443/2004 amending and supplementing Law No. 58/1998 regarding banking activity was published in Official Gazette No. 1.035 of November 9, 2004.

New amendments to the Law on banking activity

According to the new amendments to the banking Law, the minimum level of the initial capital of a bank shall not be less than the equivalent in national currency of EUR 5 million.

For the purpose of exercising specific activities, the credit institutions authorized in another member state may use on the territory of Romania their denominations in their state of origin, without prejudice to the provisions regarding the

use of denominations such as “dwelling savings bank”, “bank” or other terms used in Romania to denominate credit institutions. In order to avoid potential confusions and for the purpose of providing an appropriate clarification, the National Bank of Romania may request that such denominations are accompanied by an explanatory note.

In all their formal documents, branches of credit institutions operating in Ro-

mania and authorized in another member state must clearly identify themselves by providing a minimum of details: logo under which they were registered with the register of commerce, principal headquarters, sole registration code, order number in the register of commerce, number and date of registration with the bank register.

Rules regarding changes in the situation of credit institutions

Rules No. 11/2004 regarding changes in the situation of Banks, E-currency Issuance Institutions other than Banks, Savings Banks for Dwelling Purposes and Branches of Foreign Credit Institutions was published in Official Gazette No. 1.099 of November 25, 2004.

The Rules shall apply to credit institutions, Romanian legal entity, as well as to the branches of foreign credit institutions.

Therefore, categories of changes are provided in the situations of credit institutions which are subject to

the prior approval by the National Bank of Romania, as well as changes which shall be notified to the National Bank of Romania.

Such amendments shall be registered with the Register of Commerce.

On the date of entering into force of such Rules, the Rules No. 3/1999 of National Bank of Romania regarding changes in the situations of banks shall be abrogated.

Order No. 1.682/1.820/2004 approving Implementation Rules in application of Law No. 541/2002 for collective savings and crediting in the dwelling field was published in Official Gazette No. 1.107 of November 26, 2004.

Collective savings and crediting in the dwelling field

The Rules provide for the persons entitled to receive state premiums and the premium rates, conditions for granting a state premium as well as establishing, the method of granting and reimbursement of state premiums.

Consequently, State premiums shall be granted to citizens, natural persons with Romanian citizenship and their domicile in Romania, who concluded a

Savings-Crediting Contract with a savings bank for dwelling purposes.

The state premium shall be 30% of the amount saved by a client in a calendar year and shall not exceed the monthly gross average salary on economy.

The client of the savings bank for dwelling purposes shall benefit from the state premium on an annual basis,

provided that it concludes a savings-crediting contract for a term of a minimum of five (5) years and provided that the savings bank, at the request of the client, have not performed any full or partial reimbursements of the saved amount are performed prior to the savings expiry term established in the contract (with certain exceptions).

The reference interest rate for November 2004

Circular No. 25/2004 regarding the reference interest rate of the National Bank of Romania for November 2004 was published in Official Gazette No. 1.020 of November 4, 2004.

The reference interest rate established by the National Bank of Romania for November 2004 is 18.75% per year.

REAL ESTATE

Decision No. 408/2004 regarding claim of unconstitutionality of the provisions of Art. 3 para 1 of Law No. 54/1998 regarding the juridical circulation of land was published in Official Gazette No. 1.054 of November 15, 2004.

The object of the claim of unconstitutionality is Art. 3 para 1 of Law No. 54/1998 regarding the juridical circulation of land, according to which "Foreign citizens or stateless persons cannot acquire ownership titles over land."

The author of such claim states that the criticized legal provisions run counter to the constitutional provisions of Art. 44 para 2 and Art. 46 according to "Private ownership is guaranteed and protected by the law on an equal basis, regardless of owner. Foreign citizens or stateless persons may acquire private ownership titles over land only as a result of Romania's joining the European Union or in compliance with other international treaties concluded by

Romania on a mutual basis, in the conditions provided by the organic law, as well as by legal heritage."

The Constitutional Court hereby resolves to accept the claim of unconstitutionality and acknowledge that, in compliance with the constitutional provisions of Art. 154 para 1, the provisions of Art. 3 para 1 of Law No. 54/1998 regarding the juridical circulation of land are no longer in force to the extent that they run counter to the provisions of Art. 44 para 2, second thesis of the republished Constitution.

The unconstitutionality of provisions of Art. 3 of Law on the juridical circulation of land

Law No. 499/2004 approving Government Emergency Ordinance No. 41/2004 amending and supplementing Cadastre and Real Estate Registration Law No. 71/1996 was published in Official Gazette No. 1.069 of November 17, 2004.

A land book office shall be established in the jurisdiction of each court of law, as a subordinate unit of the Cadastre and Real Estate Registration Office that shall take over the assignments of the current land book offices of the courts.

The real estate publicity fees can be collected by the public notaries on behalf of National Agency of Cadastre and Real Estate Publicity.

The position of registrar within the cadastre and Real Estate Registration Office shall be occupied upon contest organized by the National Agency. The candidates must be graduates of an accredited school

of law and a length of service of at least five years in the legal activity.

Upon authentication of documents under which an interest in real property is established, changed or terminated, the notary public shall request a land book excerpt or, according to the case, an encumbrance certificate. For the validity of the land book excerpt, the registrar shall not perform any registration with the land book, except that for which issuance of the excerpt was requested.

Amendment of the Cadastre and Real Estate Registration Law

INFORMATION TECHNOLOGY

Law No. 451/2004 regarding temporal mark was published in Official Gazette No. 1.021 of November 5, 2004.

Law regarding temporal marks

Law No. 451/2004 (the "Law") establishes the juridical regime of the temporal mark and supply conditions of temporal markup services.

According to the Law, "the temporal mark" is construed as a data collection in electronic form affixed in a sole manner to an electronic document; it certifies the fact that certain data in

electronic form were presented at a determined moment in time to the supplier of temporal markup services.

Suppliers of temporal markup services have the obligation to establish and maintain an operative electronic register recording the moment in time at when the temporal marks were issued.

The supplier of temporal markup services shall avail of

protective financial instruments to cover the damage that may be incurred during the performance of activities related to temporal markup.

The Law shall enter into force within 30 days as of its publication in the Official Gazette of Romania.

TELECOMMUNICATIONS

Law No. 506/2004 regarding personal data processing and protection of private life in e-communication was published in Official Gazette No. 1.101 of November 25, 2004.

Personal data processing and protection of private life in e-communication

Law No. 506/2004 (the "Law") provides the specific conditions to guarantee the right to protection of private life in the e-communications personal data processing.

The provisions of the law shall be applied to providers of public e-communications networks and providers of e-communications services to the public, as well as to providers of value-added services and to providers of subscriber registers, within commercial activities, processing personal data.

According to the law, the provider of e-communications services to the public must take all the appropriate technical and organizational measures for the purpose of guaranteeing service safety.

Conditions in which providers must meet such obli-

gation shall be established by the National Authority for Communications.

Confidentiality of communications rendered through public e-communications networks and of e-communications services to the public, as well as confidentiality of related traffic data shall be guaranteed.

Traffic data regarding subscribers and users, processed and stored by the provider of a public e-communications network or by the provider of e-communications services to the public, must be deleted or turned into anonymous data when no longer necessary upon rendering of a communication.

The law also provides that commercial communications is not permitted by using automatic calling systems that would require intervention of a human operator, by fax or

e-mail or by any other method using the services of e-communications for the public, except for the case in which the involved subscriber granted its prior explicit consent to receive such communications.

Commercial communications is not permitted by e-mail in which real identity of a person on whose behalf such communications are made is not disclosed or in which a valid address is not specified to which the sender may render its request regarding cessation of such communications.

On the date of entering into force of this law, Law No. 676/2001 regarding personal data processing and protection of private life in telecommunications sector shall be abrogated.

MASS MEDIA

Law No. 457/2004 on advertising and sponsorship of tobacco products was published in Official Gazette No. 1.067 of November 17, 2004.

In accordance with Law No. 457/2004 (the "Law") advertising of tobacco products shall be forbidden:

- in the written press and other printed materials, except for announcements explicitly provided by law;
- broadcasted in public or private radio and television programs;
- in cinema theaters;
- on advertising boards, canvas covers, or display structures for which display taxes are due for advertising and publicity;
- through information society services;
- by use of tobacco trademarks for products and services, which are not related to tobacco products;
- by sale of sweets and toys designed for children and manufactured with obvious purpose to give to the product/packaging the resemblance with a tobacco product.

Advertising for tobacco products is allowed only in publications for professionals in the tobacco industry and in publications which were not edited or printed in Romania or in an EU member state and which are not designed mainly for the Romanian market or for the community market.

Sponsorship of tobacco products, for events or activities which have cross-border effects or which involve or take place in at least two EU member states, one of which is Romania, shall be forbidden.

Free distribution of tobacco products in the context of sponsoring the above-mentioned events having as effect direct or indirect promotion of tobacco products is also forbidden.

The Law comes into force on December 31, 2006.

Advertising and sponsorship of tobacco products

REGIME OF FOREIGNERS

Law No. 482/2004 amending and supplementing Government Emergency Ordinance No. 194/2002 regarding the regime of foreigners in Romania was published in Official Gazette No. 1.116 of November 27, 2004.

According to the Law on the regime of foreigners (the "Law") the foreigner, holder of a permanent residence right, shall be treated, in compliance with the legal provisions, on an equal basis as if a Romanian citizen, as regards:

- access on a labor market, provided that the performed activity does not imply, even occasionally, exercising of certain powers of the public authorities;
- access to all forms of education;
- validation of studies and recognition of diplomas, of certificates and other qualifications, in compliance with the national provisions;
- national security, social assistance and health and social protection;
- deduction of tax on global income and tax exemptions;
- access to public goods and services, including obtaining a house for residence;

- Freedom of association, affiliation and membership of trade union or professional organizations.

The Law also provides assistance measures regarding transit in case of return by airfare among EU member states.

The decisions for removal of foreigners, citizens of third states, from the territory of the EU member states are recognized by the Romanian state and shall be applied by the Authority for Foreigners in the following cases:

- the removal decision is taken on grounds of public order and national security;
- the removal decision is taken as a result of the foreigner's failure to meet the conditions regarding entry and residence of foreigners on the territory of the involved member state.

Foreigners, citizens of third states or stateless persons, with a permanent residence right in the EU member states, may

Amendments of the Law on the regime of foreigners

enter and reside on the territory of Romania for a period of 90 days during a period of six months, without the obligation to obtain entry visas.

The persons above-mentioned may be granted an extension of their temporary residence right, without meeting the prior conditions for issuance of a long-term residence visa, in compliance with the terms of this emergency ordinance.



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