



PACHIU & ASSOCIATES
ATTORNEYS AT LAW

LEGAL UPDATE

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Special points of interest:

- Amendments to the Fiscal Code
- New Administrative Dispute law
- Electronic activity of notaries

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TAXATION

Amendments to the Fiscal Code

Emergency Government Ordinance No. 138/2004 amending Law No. 571/2003 regarding the Fiscal Code was published in Official Gazette No. 1281 of December 30, 2005

Emergency Government Ordinance No. 138/2004 (“**EGO 138/2004**”) amended two main chapters of the Fiscal Code: profit taxation and taxation of incomes obtained by individuals and microenterprises.

The profit tax was decreased from 19% to 16%. The special profit tax rate provided for by the Fiscal Code for capital gains and real estate transactions (10%) remains unchanged.

As regards the taxation of incomes obtained by individuals, EGO 138/2004 introduced a flat tax of 16% and abandoned the system of progressive taxation and globalization of incomes.

The following incomes are subject to 16% tax: revenues from independent activities, salaries, transfer of the use of assets, investments, pensions, agricultural activities, prizes and fortune games and revenues from other sources.

For incomes obtained from independent

activities, the membership fees paid to professional associations are considered deductible expenses only within a threshold of maximum 2% of the taxable amount.

The deductible expenses taken into account for determining the tax on incomes from intellectual property rights were decreased from 60% of the gross income to 40%.

As concerns the taxation of the salary incomes, the conditions for granting the personal monthly deduction were amended. Therefore, individuals whose gross monthly salary incomes are up to ROL 10,000,000 benefit from personal deduction ranging from ROL 2,500,000 to ROL 6,500,000 subject to the number of persons supported by the taxpayer.

For monthly salary incomes between ROL 10,000,001 and ROL 30,000,000 the personal deductions shall be established by the Ministry of Public Finance. Taxpayers with gross monthly salary incomes over ROL 30,000,000 shall not benefit from the personal deduction.

The non-taxable amount from pension incomes was increased from ROL 8,000,000 to ROL 9,000,000.

The tax to be applied on incomes obtained from prizes awarded in contests shall be 16% and shall apply only to amounts that exceed ROL 8,000,000 per contest; meanwhile the tax on incomes obtained from gambling is 20%.

Incomes from other sources shall be subject to a 16% withholding tax.

The taxpayers may allot up to 2% of the amount of the annual tax on income for the sponsorship of the non-profit entities established in accordance with G.O. 26/2000.

Another major amendment concerns the tax on the incomes obtained by microenter-



Emergency Government Ordinance No. 123 amending Law No. 571/2003 regarding the Fiscal Code was published in Official Gazette No. 1154 as of December 7, 2004.

Other amendments of the Fiscal Code

According to the amendments brought by the ordinance, the provision of the Fiscal Code regarding prior notification of the tax authorities for the assignment or alienation of

shares or immovable assets within 60 days prior to performance, has been abrogated.

A new important provision is the one regarding to the reduction by 50% the stamp

duties for authentication of the documents having as object the transfer of ownership titles or other real titles over land free of construction.

INSURANCE

Law No. 503/2004 on financial recovery and bankruptcy of insurance companies was published in Official Gazette No. 1.193 of December 14, 2004.

Financial recovery and bankruptcy of insurance companies

Law on financial recovery and bankruptcy of the insurance companies (the "Law") governs the procedure of financial recovery of the insurance company, as well as the bankruptcy procedure in case of insolvency.

Such procedure shall apply to insurers and/or re-insurers, including their foreign branches, as well as to branches and subsidiaries by foreign insurance companies established in Romania.

The Insurance Supervision Commission ("ISC") is the only body authorized to decide applying the methods and the measures of financial recovery to insurance and reinsurance companies.

The bankruptcy procedure shall be opened by submission of a petition either by the ISC or by the insurance company in debt or by its creditors, as the case may be.

The opening of the bankruptcy procedure against the insurance company in debt shall be ordered by a decision of the tribunal. Such decision shall result in the withdrawal by the ISC of the authorization for operation of the insurance company in debt.

As of the date when the decision for opening the bankruptcy procedure remains irrevocable, the insurance receivables shall be paid by the Security Fund.

Order No. 3.109/2004 applying the Rules on the update of the minimum share capital to be paid by insurers was published in Official Gazette No. 1.243 of December 23, 2004.

On the date of enforcement of the Rules, the authorized insurers must increase their share capital as follows:

Until June 30, 2005:

a) ROL 40 billion, for general insurance activity, excepting compulsory insurances;
b) ROL 65 billion, for general insurance activity;

c) ROL 60 billion, for life insurance activity;
d) the sum of the amounts provided at let. a) and c) or b) and c), as the case may be, depending of the performed insurance activity.

Until December 31, 2005:

a) new ROL 6,500,000 (equivalent of old ROL 65 billion), for general insurance activity, excepting compulsory insurance);
b) new ROL 10,000,000 (equivalent of old

ROL 100 billion) for general insurance activity;

c) new ROL 10,000,000 (equivalent of old ROL 100 billion) for life insurance activity;
d) the sum of the amount provided at let. a) and c) or b) and c), as the case may be, depending of the performed insurance activity.

Until June 30, 2006:

a) new ROL 10,000,000, for general insurance activity, excepting compulsory insurance;
b) new ROL 15,000,000, for general insurance activity;
c) new ROL 15,000,000, for life insurance activity.

Such increase shall be made entirely by cash contributions.

Updating of the minimum share capital of insurers

Order No. 3.110 applying the Norms on the authorization of insurance and/or re-insurance brokers was published in Official Gazette No. 1.243 of December 23, 2004.

In order to obtain the operation authorization as an insurance and/or reinsurance broker, the applicant must have a share capital in cash of minimum ROL 250 million.

In addition, the applicant must have an insurance contract for civil liability exceeding EUR 450,000/event and an aggregate

amount of EUR 750,000 per year, without deductibles. The authorization tax is ROL 50 million.

Any amendments to the documents or conditions on the basis of which the authorization was granted, shall be made only with the prior notice of the Commission for Insurance Supervision.

Authorization of the insurance and/or re-insurance brokers

PUBLIC ADMINISTRATION

Administrative Dispute Law No. 554 was published in Official Gazette No. 1154 of December 7, 2004.

As of January 6, 2005, Law No. 554/2004 (the "Law") is the new legal framework for administrative dispute, abrogating the provisions of Law No. 29/1990 regarding administrative dispute.

According to the Law, the following persons and institutions, other than the natural or legal entity prejudiced by the administrative document, are entitled to file an action with the administrative court: the Romanian Ombudsman, the prefect, the Public Ministry, the National Agency of Public Clerks and any person suffering a prejudice following an administrative document addressed to another person.

During trial, the exception of illegality of an administrative document can be claimed.

The previous provisions of law regarding the prior administrative procedure were maintained with several exceptions. If the action is submitted by the prefect, the Romanian Ombudsman, the Public Ministry and the National Agency of Public Clerks or the persons who suffered a prejudice from the provisions of a Government Ordinance, the usual prior administrative procedure is not mandatory. In the case of administrative agreements, the prior administrative procedure is construed as conciliation in a commercial trial.

The person whose rights or legitimate interests are prejudiced by a Government Ordinance shall submit an action to the administrative dispute court together with the exception of non-constitutionality. Such actions can be submitted at any time, since

no statute of limitation is provided by the Law in this case.

The Law establishes new court competences in the field of administrative dispute. Therefore, administrative litigations regarding administrative documents issued by local and county public authorities, as well as regarding taxes, contributions, customs debts and their accessories up to ROL 5 billion, shall be ruled over by the tax-administrative courts. Until the establishment of such courts, the litigations shall be settled before the tribunal of administrative dispute, and the administrative litigations related to administrative documents issued by the central public authorities as well as related to tax, contributions, customs debts and their accessories exceeding ROL 5 billion, shall be judged by the court of appeal, unless the legal provisions do not otherwise provide.

The new statute of limitation for filing an action against an administrative document is six months or one year if compensations were not requested from the beginning.

If based on the court resolution, the administrative bodies have the obligation to issue an administrative document and they fail to observe such obligation within 30 days from the final and binding court decision, the penalty shall consist in a fine of 20% of the minimum gross salary per each day of delay. If they fail to observe the legal term, after applying the fine, the deed shall be considered as an infringement and shall be subject to an imprisonment term from 6 months up to 3 years or applied a fine between ROL 25,000,000 and ROL 100,000,000.

Administrative Dispute Law

Public-Private Partnership Agreements

Law No. 528 on the amendment of Government Ordinance No. 16/2002 regarding public – private partnership agreements and of Law No. 219/1998 regarding concessions was published in Official Gazette No. 1153 of December 7, 2004.

Law No. 528/2004 (the “**Law**”) clarifies the legal framework of concessions by establishing that concessions performed based on public-private partnership agreements shall have as object only public works while the conventional concession shall have as object public activities, services and assets and shall be performed based on a concession agreement. Most of the new provisions apply to both methods of concession.

Besides the already existing methods of concession,

a new concession procedure shall be applied: the competitive dialogue. By this procedure, the relevant authority may initiate consultations with preliminary investors in order to develop one or more versions that comply with the terms and conditions of the relevant authority based on which the candidates are invited to bid.

Advertising of any concession agreements shall not be performed only in the Romanian Official Gazette but also in the Official Journal of European Communities and/

or in an international wide-circulation newspaper.

Until the privatization of the national and commercial companies set up through the reorganization of autonomous regies, they may be directly assigned concession assets of private or public ownership of the state, pertaining to the field of activity for the accomplishment of public infrastructures.

The law abrogates all the provisions regarding the concession of works in GEO No. 60/2001 regarding public acquisitions.

INFORMATION TECHNOLOGY

Law No. 533 amending Government Ordinance No. 51/1997 regarding leasing operations and leasing companies was published in Official Gazette No. 1135 of December 1, 2004

Leasing of computer software programs

According to the new amendments, the right to use computer software may be the subject to a leasing operation, if the holder of the copyright is authorized for such operation. The procedure for the leasing operation is the same as the one for other types of assets subject to leasing operation.

At the end of the leasing period or even before the due date, the lessee may acquire the permanent right to use of the computer software, for an undetermined term.

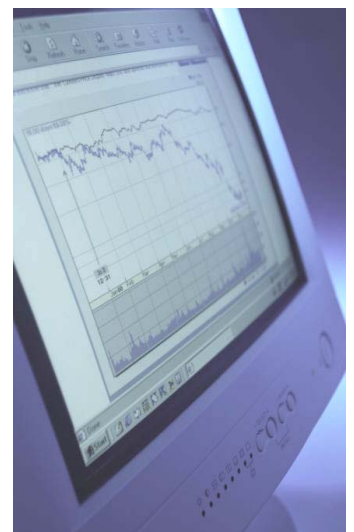
The agreement having as object the right to use computer software represents

enforceable title if the user waives any utilization rights, does not uninstall or erase the security copies, as well as return the equipment and documentation of the computer software, in the following cases:

- a) at the end of the leasing period, if the user has not opted for the purchase of the asset;
- b) in case of termination of the agreement due to the exclusive default of the user.

If during the leasing agreement, the financier assigns the permanent right to use the computer software, the other financier shall have the

same obligations as the first financier. The first financier shall remain the guarantee for the fulfillment of the obligations towards the user.



PUBLIC NOTARIES

Law No. 589 regarding legal framework of the electronic activity of notaries has been published in Official Gazette No. 1227 of December 20, 2004

According to the provisions of law, public notaries are authorized to authenticate and legalize electronic documents, based on an authorization that shall be obtained from the relevant authority (which is not defined by the law).

The documents that can be drafted in electronic form are as follows: legalization of electronic copies after originals; certification of date; receiving and maintenance

of documents in the electronic archive, legalization of translation in electronic form; release of duplicates; other operations provided by law.

The validity of the notary document in electronic form abroad shall be established by international conventions concluded by Romania with other states.

Electronic activity of notaries

COMPETITION

Order No. 501/2004 applying the Rule on the state aid for the recovery and restructuring of the companies in difficulty was published in Official Gazette No. 1.215/2004 of December 17, 2004.

In accordance with the Rule on state aid for the recovery and restructuring of the companies in difficulty (the "Rule"), a company is considered in difficulty when such company is not able to cover the loss, which, without an intervention from the public authorities, will lead to its removal from the economic system.

The aid for recovery and restructuring a company shall be granted only once and cannot exceed the equivalent in ROL of the EUR 10 million.

The non-refundable aid for small and medium-size enterprises shall be granted only upon the condition of the full implementation of the restructuring plan.

Any aid granted to the large and medium-size enterprises within the restructuring period shall be individually notified to the Competition Council provided that it was not informed in this respect at the time of its decision regarding the restructuring aid. Furthermore, any aid granted for a period exceeding 6 months or for 6 months but non-refundable after such period, must also be individually notified to the Competition Council as well.

On the date of enforcement of such Rule, the Rule on the state aid for the recovery and restructuring of companies in difficulty implemented by Order No. 92/2002 shall be repealed.

State aid for companies in difficulty

BANKING

Circular No. 27/2004 regarding the reference interest rate of the National Bank of Romania for December 2004 was published in Official Gazette No. 1.157 of December 7, 2004.

The reference interest rate established by the National Bank of Romania for December 2004 is 17.96% per year, lower by 0.79 units than the rate established for November 2004.

Reference interest rate for December 2004

Amendment of the Law on redenomination of National Currency

Order No. 1840 approving the Clarifications regarding certain measures to be taken for the application of Law No. 348 regarding redenomination of National Currency was published in Official Gazette No. 1247 of December 23, 2004

As of July 1, 2005, the legal entities shall convert into the new currency the initial balances, the final cash-flows and final statements included in the verification balance of June 30, 2005. The persons liable for the accuracy of the conversion shall be the administrator, the credit coordinator or the person in charge with the management of the company.

After July 1, 2005, the invoices and all the evidence and financial accounting documents, including the annual financial statements for 2005, shall be drawn up in the new currency. The business entities shall

have the legal obligation to use electronic fiscal cash-registers and to provide customers with the fiscal receipt and, upon request, with the invoice expressed in the new currency, no matter if the payment was in the old or new currency.

During March 1 – June 30, 2005, the prices and tariffs of goods and services shall be displayed both in the old and new currency and the invoices for utility services, although drawn up in the old currency, shall have the amount payable expressed both in the old and new currency.

CRIMINAL LAW

New amendments to the Criminal Procedure Code

Law No. 576 amending and supplementing the Criminal Procedure Code was published in Official Gazette No. 1.223 of December 20, 2004.

The amendments refer to the appeal for cancellation and application for review. The Code governs the procedure for review of the resolutions of the European Court of Human Rights, and also abrogates the provisions regarding the appeal for cancellation.



PACHIU & ASSOCIATES ATTORNEYS AT LAW

36 Spatarului Street, Suite No.
4, Bucharest 2, Romania
Phone: +40(21) 212 00 23
Fax: + 40 (21) 211 56 36
E-mail: office@lp-legal.com
Web: www.lp-legal.com

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