



PACHIU & ASSOCIATES  
ATTORNEYS AT LAW

# LEGAL UPDATE

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## Special points of interest:

- **New Amendments to the Fiscal Code**
- **Fewer Restrictions for Foreign Currency Operations**
- **A New Regulation regarding Payment Order**
- **Granting of Loans by Local Public Administration**

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## TAXATION

### **New Amendments to the Fiscal Code**

*Government Emergency Ordinance No. 24 amending and supplementing Law No. 571/2003 regarding the Fiscal Code was published in Official Gazette No. 263 of March 30, 2005*

The main amendments brought by Government Emergency Ordinance No. 24/2005 (the "**Ordinance**") concern the income tax, the value added tax and excises.

### **Income Tax**

The tax for investment incomes was increased. Thus, interests that represent income are subject to a 10% taxation (as compared to 1% previous provided). In case of securities transfer, the tax to be applied depends on the frequencies of the transfers. A tax of 10% shall be applied on the income obtained from securities transfers within a period of less than 365 days as of their acquiring. If the securities transfer was performed on a period longer than 365 days, the tax to be applied on the income shall be 1%.

The tax of 16 % shall not be applied on incomes obtained from prizes awarded in contests and gambling if the amounts do not exceed ROL 6,000,000 (as compared to ROL 8,000,000 previous provided). Such amount is considered per contest, respectively game of chance, performed by the same organizer within the same day.

The Ordinance sets forth new taxes for incomes obtained from the transfer of real estate from personal patrimony. Thus, for the transfer of such properties the tax is 10% and shall become 16% as of January 1, 2006. The following incomes are exempted from taxation: income obtained from the transfer of real estate whose ownership right was restored, income obtained from the transfer of buildings and their land held by owners for a term exceeding 3 years and income obtained from the transfer of inher-

ited or donated real estate, within at least 3 years before transfer.

The provisions regarding the income taxes shall enter into force as of May 1, 2005.

### **Value Added Tax**

According to the Ordinance, the following activities shall no longer be exempted from VAT: entertainment activities, broadcasting of programs by cable companies, sale of film license, broadcasting rights for radio and television, except for advertisements. The new provisions concerning VAT shall apply as of June 1, 2005.

### **Excises**

As of April 1, 2005, the excises for gas, tobacco, alcohol, and luxury products have increased. New excises were established for electricity, natural gas and vehicles under 1601 ccm. As regards the excises for electronic home appliances (video cameras, digital cameras), microwaves, air conditioning equipment, excises are 20% higher. The consequence of such excises shall be a rise in prices of the products subject to excises.



## BANKING

*Circular No. 7 regarding measures to be taken by credit institutions/State Treasury in application of Law No. 348/2004 regarding re-denomination of currency was published in Official Gazette No.*

### **Special Measures to Be Taken by Credit Institutions regarding Re-denomination**

As of May 1, 2005, the National Bank of Romania ("NBR") shall provide credit institutions with amounts in the new national currency. Such amounts are covered by the guarantees established in the conventions concluded for the purpose of implementing the re-denomination procedures.

Beginning with July 1, 2005, the NBR shall put into circulation the new banknotes and coins. Payments and collections shall be performed in both currencies, except for payments between credit institutions, the NBR and the State Treasury which shall be performed only in RON. As of the same date, all the forms issued by the credit

institutions/State Treasury shall contain both currency signs: ROL, respectively RON.

The accounting shall be kept in RON and all invoices and other financial accounting documents shall be drawn in RON. The administrator or the person in charge with the management of the credit institutions shall be liable for the accuracy of the conversion of ROL into RON in the accounting and financial records.

The international code for the new currency is "RON 946 minor unit" representing 1 Romanian Leu equal to 100 bani (RON division).

During the period of March 1, 2005 – June 30, 2006, the commissions and tariffs used by credit institu-

tions shall be posted in both currencies, at the headquarters and places of services provided by such institutions.

The old banknotes and coins may be changed into new ones within the NBR branches and at the credit institutions appointed by the Order of the Finance Minister. Such change shall be performed during the period of January 1, 2007 up to December 31, 2009 and no commission shall be charged.

June 30 and July 1, 2005 shall be considered non-business days. During such period, the new banking IT applications of credit institutions and the State Treasury shall be implemented.

*Circular No. 9 amending NBR Regulation No. 1/2004 on foreign currency operations was published in Official Gazette No. 195 of March 8, 2005*

### **Fewer Restrictions for Foreign Currency Operations**

The amendments set forth by Circular No. 9/2004 refer to the provisions stipulated in the NBR Instructions regarding the organization and operation of interbank forex market in Romania.

According to the new provisions, access of residents and non-residents to the interbank forex market in Romania by using sale/purchase foreign currency orders is free. Such incentive is applicable to all operations that may be performed under the provisions of NBR Regulation No. 1/2004 on foreign currency operations.

Circular No. 9/2005 repealed the obliga-

tion of submitting attesting documents, including the NBR authorization (if applicable), for the nature of the foreign currency operation, the amount to be transferred or paid and the legal source of money in national currency.

The forms and content of sale/purchase foreign currency orders of residents and non-residents, as well as the manner in which they are forwarded, shall be set by agents, according to their own procedures. The agents may receive spot or forward sale/purchase orders for foreign currency at their headquarters or by means as remote transmission, computers.

### **Granting of Loans by Local Public Administration**

*Circular No. 8 regarding the reference interest rate of the National Bank of Romania for March 2005 was published in Official Gazette No. 195 of March 8, 2005*

The reference interest rate established by the National Bank of Romania for March 2005 is 10.75% per year, lower by 4.94 units than the rate established for February 2005.

*National Bank of Romania Regulation No. 2 regarding the payment order for transfer – credit operations was published in Official Gazette No. 265 of March 31, 2005*

In accordance with Regulation No. 2/2005 (“the **Regulation**”), the institutions settling payment orders are credit institutions, the State Treasury and the National Bank of Romania (“**NBR**”).

The Regulation sets forth new mandatory conditions to be inserted for identification in a payment order,

such as the amount of money, expressed in both new and old currency, and date of the issuance of the payment order.

In case the beneficiary must be paid in cash and it does not hold an account with the institution settling the payment order, such institution shall keep the amount for a period that shall not exceed 10 busi-

ness days as of the completion of the transfer-credit operation. After such term expires, the amount shall be sent to the institution that issued the payment order.

The interests due for the delays related to the payment order shall be calculated by applying an interest rate that cannot be less than NBR reference interest rate.

### **A New Regulation regarding Payment Order**

## **PUBLIC ADMINISTRATION**

*Government Resolution No. 158 establishing the competencies of the Commission for the Authorization of the Local Loans was published in Official Gazette No. 220 of March 16, 2005*

Government Resolution No. 158/2005 (the “**Resolution**”) sets forth the possibility of the local public administration to contract or guarantee loans for the accomplishment of public investments of local interest, as well as for re-financing of local public debts. Such operations shall be performed based on the approval of the Commission for the Authorization of Local Loans (“**CALL**”).

According to the new provisions, the local public administration may guarantee loans for businesses and public services managed by the administrative-territorial units. The guaranteed loans may be both internal and external. As regards the external loans, they

may be contracted either directly by the businesses/public services or indirectly by the Romanian state and sub-loaned to the businesses.

The authority of the local public administration has the obligation to send copies of the loan agreement/guarantee agreement to the Ministry of Public Finance, within 10 days as of enforcement of such agreements.

At the date of enforcement of this Resolution, Government Resolution No. 978/2001 for establishing the competencies of the CALL for contracting and guaranteeing external loans by the local administration authorities shall be repealed.

### **Granting of Loans by Local Public Administration**

*Government Resolution No. 208 regarding the organization and functioning of the Ministry of Public Finance and the National Agency of Fiscal Administration was published in Official Gazette No. 173 of March 31, 2005*

According to Government Resolution No. 208/2005 (“the **Resolution**”) the National Authority of Customs and the Financial Guard shall be organized and shall operate within the Ministry of Public Finance - National Agency of Fiscal Administration (the “**NAFA**”).

The Resolution sets forth new competencies for the NAFA such as solving the complaints filed against the fiscal administrative documents and the possibility to waive litigation rights of the state related to fiscal matters, based on a prior consent of the Government.

The Ministry of Public Finance and its subordinated authorities may lease to businesses or give for the free use of public institutions,

areas of real estate under, public or private, ownership of the state. The purposes of such lease/free use are: operating snack bars, installation of beverage automats, installation of means of communications, posting of advertisements, copy centers, trade of fiscal stamps, press and other activities related to those of the Ministry of Public Finance.

The Resolution abrogated Government Resolution No. 1574/2003 regarding the organization and functioning of the Ministry of Public Finance and the National Agency of Fiscal Administration and the Government Resolution No. 159/2002 regarding certain measures for the lease of spaces by the Ministry of Public Finance.

### **New Authorities Subordinated to the Ministry of Public Finance**

## INCORPORATION

### **Extension of Term for Approval of Certain Company Names**

*Emergency Government Ordinance No. 17 establishing certain organizational measures regarding public central administration was published in Official Gazette No. 229 of March 18, 2005*

According to the provisions of Ordinance No. 17/2005 ("the **Ordinance**"), it was extended the term for obtaining the approval from the Government General Secretary regarding the company name containing words or expression: "national", "Romanian", "institute" and their assimilated words or extensions. The new deadline for obtaining such approval is May 30, 2005.

## REAL ESTATE

### **Free Release and Hand Over of Ownership Titles of Agricultural and Forest Land**

*Law No. 34 approving Government Emergency Ordinance No. 105/2004 regarding certain measures for the release and hand over of ownership titles over agricultural and forest land was published in Official Gazette No. 200 of March 9, 2005*

According to the approved Government Emergency Ordinance No. 105/2004, as of November 19, 2004, the release and hand over of ownership titles over the agricultural and forest land shall be performed free of charge. Any provisions running counter to this are abrogated.



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