

# Tax & Legal Alert

ROMANIA 21 April 2009

## Updated amendments to the Fiscal Code and the Fiscal Procedure Code

On April 16, the Government issued a correction regarding the date of entry into force of the tax measures introduced by Emergency Ordinance No 34 dated 11 April 2009 ("Ordinance").

According to this correction, all tax measures enter into force with effect from 1 May 2009.

Please find below the updated version of the most important changes brought by the Ordinance to the Fiscal Code and the Fiscal Procedure Code.

<b>Amendments</b>	<b>Applicability</b>																
<p data-bbox="129 824 1177 857"><b>Title II "Profit tax" and Title IV "Micro-companies tax"</b></p> <p data-bbox="129 880 1177 913">The concept of "<i>minimum tax</i>" is introduced, as described below.</p> <p data-bbox="129 943 1177 976"><b>General framework</b></p> <p data-bbox="129 1003 1177 1099">Profit tax payers (Romanian companies as well as foreign companies operating in Romania through permanent establishments) as well as micro-companies are obliged to pay this minimum tax.</p> <p data-bbox="129 1126 1177 1189">The minimum tax is due if the profit tax or the micro-company's turnover tax are lower than the minimum tax.</p> <p data-bbox="129 1216 1177 1279">The minimum tax is determined based on the revenues reported on 31 December of the previous year, using the following thresholds:</p> <table border="1" data-bbox="140 1305 699 1570"><thead><tr><th>Total annual revenue (RON)</th><th>Annual minimum tax (RON)</th></tr></thead><tbody><tr><td>0 – 52,000</td><td>2,200</td></tr><tr><td>52,001 – 215,000</td><td>4,300</td></tr><tr><td>215,001 – 430,000</td><td>6,500</td></tr><tr><td>430,001 – 4,300,000</td><td>8,600</td></tr><tr><td>4,300,001 – 21,500,000</td><td>11,000</td></tr><tr><td>21,500,001 – 129,000,000</td><td>22,000</td></tr><tr><td>Over 129,000,001</td><td>43,000</td></tr></tbody></table> <p data-bbox="129 1597 1177 1659">Certain categories of revenues are expressly excluded by the law for assessing the threshold.</p> <p data-bbox="129 1686 1177 1749">However, revenues from dividends received from Romanian or foreign companies are not excluded.</p> <p data-bbox="129 1776 1177 1809"><b>Specific provisions and transitory measures</b></p> <ul data-bbox="188 1843 1177 1939" style="list-style-type: none"><li>Newly created Romanian banks and Romanian branches of foreign banks have to perform advance payments in the first year of RON 2,200, recalculated for the respective taxable period.</li></ul> <p data-bbox="236 1966 1177 2029">Where losses were registered, banks have to make advance payments amounting to a quarter of the minimum annual tax.</p> <p data-bbox="236 2056 1177 2116">Banks which benefitted from profit tax exemptions in the previous year but no longer benefit from this incentive in the current year have to determine the</p>	Total annual revenue (RON)	Annual minimum tax (RON)	0 – 52,000	2,200	52,001 – 215,000	4,300	215,001 – 430,000	6,500	430,001 – 4,300,000	8,600	4,300,001 – 21,500,000	11,000	21,500,001 – 129,000,000	22,000	Over 129,000,001	43,000	<p data-bbox="1182 976 1445 1072">The minimum tax is applicable from 1 May 2009.</p>
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<p>advance payments at the level of the profit tax for the previous tax year without taking into account the exemption.</p> <ul style="list-style-type: none"> <li>• Regular companies, excluding banks, have to determine the tax liability in the 2<sup>nd</sup> quarter from whichever is higher between the profit tax and the annual minimum tax calculated for the period 1 May - 30 June 2009.</li> <li>• For the 3<sup>rd</sup> and 4<sup>th</sup> quarters, the tax payment is determined from whichever is higher between the profit tax and the annual minimum tax, calculated by dividing by 12 and multiplying by the number of months afferent to the quarter.</li> <li>• These provisions also apply to micro-companies, but the comparisons have to be made between the micro-companies' turnover tax and the annual minimum tax.</li> </ul>	
<p><b>Deductibility of company vehicle expenses</b></p> <p><i>Vehicle expenses - General rule for fuel expenses</i></p> <ul style="list-style-type: none"> <li>• During the period 1 May 2009 to 31 December 2010, fuel expenses for company vehicles weighing under 3,500 kg and with fewer than nine passenger seats (including the driver's seat) and used exclusively for passenger transport are non-deductible for profit tax purposes.</li> </ul> <p>By exception, fuel expenses are deductible for vehicles used in the following activities:</p> <ul style="list-style-type: none"> <li>- intervention, repair, safety and security, courier services, transporting staff to and from the work place, TV vans, cars used by sales agents and recruitment agents;</li> <li>- paid transportation services and taxi activities;</li> <li>- rental and</li> <li>- driver schools.</li> </ul> <p><i>Vehicle expenses – Specific provisions for executives</i></p> <ul style="list-style-type: none"> <li>• Operation, maintenance and repair expenses for vehicles used by individuals in company leadership and management positions are deductible within the limits of one vehicle per person.</li> <li>• Fuel expenses have been expressly excluded from this category of limited deductibility expenses, so they fall under the general rule mentioned above.</li> </ul>	<p>These provisions apply during the period 1 May 2009 to 31 December 2010.</p>
<p><b>Revaluation reserves</b></p> <ul style="list-style-type: none"> <li>• Reserves from revaluation of fixed assets and land, made after 1 January 2004, which are deductible through depreciation or through expenses triggered by assets sold or written off, are taxable at the same time and for the same amount as the tax depreciation deduction, respectively when the assets are sold or written off.</li> </ul>	<p>These provisions apply from 1 May 2009.</p>
<p><b>Social Fund</b></p> <p>A Social Fund is being set up from the contributions made voluntarily by domestic producers and distributors of natural gas from price increases. This fund is collected and distributed during 2009 for providing social aid to individuals in need.</p> <p>The Ordinance provides that these amounts will not follow the tax treatment of sponsorship (i.e. expenses are non-deductible but a tax credit is given from the profit tax, within the limits set by law). These contributions have limited deductibility but the Ordinance does not clarify the limit.</p>	<p>These provisions apply from 1 May 2009.</p>

<p><b>Title III “Individual income tax”</b></p> <ul style="list-style-type: none"> <li>• During the period 1 May 2009 to 31 December 2010, when determining the net annual income from independent activities, fuel expenses for company cars weighing under 3,500 kg and with fewer than nine passenger seats (including the driver's seat) used exclusively for passenger transport are non-deductible for individual income tax purposes.</li> </ul> <p>The same exceptions are stipulated as for profit tax above.</p>	<p>These provisions apply for the period 1 May 2009 – 31 December 2010.</p>
<p><b>Title VI “Value Added Tax”</b></p> <ul style="list-style-type: none"> <li>• During the period 1 May 2009 to 31 December 2010, companies cannot deduct VAT on acquisitions of fuel and vehicles exclusively used for passenger transport, weighing under 3,500 kg and with fewer than nine passenger seats (including the driver's seat).</li> </ul> <p>The same exceptions apply as mentioned under profit tax and individual income tax above.</p> <p>In addition, VAT is deductible on the acquisitions of fuel and of the following categories of vehicles: cars used for providing services for consideration, including rental to others, the transfer of usage rights under a financial or operational leasing contract, vehicles used for commercial purposes (i.e. for the purpose of resale).</p> <ul style="list-style-type: none"> <li>• Subsequent sale of vehicles for which no VAT deduction was allowed at the time of acquisition is VAT exempt.</li> <li>• For those taxpayers whose fiscal period is the calendar quarter, the fiscal period becomes the calendar month if they perform a taxable intra-Community acquisition in Romania.</li> </ul>	<p>These provisions apply for the period 1 May 2009 – 31 December 2010.</p> <p>These restrictions to the VAT deduction right do not apply to advance payments made before 1 May 2009 for vehicles sold after this date.</p>
<p><b>Title VII “Excises”</b></p> <ul style="list-style-type: none"> <li>• Wholesale traders of fuels (e.g. gasoline, diesel, gas) are obliged to register themselves with the fiscal authority. The registration procedure and the conditions for developing their activity are to be established by Order of the National Agency of Fiscal Administration (“the Order”). Non-compliance with this procedure is to be sanctioned with penalties and confiscation of sales revenues.</li> <li>• Wholesale traders of fuels are obliged to apply the procedure to be issued through the Order within 90 days from the publishing day. Non-compliance with this procedure is to be sanctioned with penalties, confiscation of sales revenues and suspension of activity one to three months.</li> <li>• These provisions do not apply to tax warehouse keepers and registered traders authorised for energy products.</li> </ul>	<p>These provisions apply from 1 May 2009.</p>
<p><b>Fiscal Procedure Code</b></p> <ul style="list-style-type: none"> <li>• Not submitting the recapitulative statements for intra-community trade in time or submitting them with delay, with incorrect or incomplete figures, represents a minor offence. This is to be sanctioned with a fine of 2% of the total amount of intra-community acquisitions / supplies which were not declared or of the differences resulting from incorrect / incomplete reporting.</li> </ul>	<p>These provisions apply from 1 May 2009.</p> <p>Companies correcting the recapitulative statements that</p>

- This fine can be avoided partially or totally by correcting the statement under certain conditions provided by the law.

have filing deadlines before the entry into force of the Ordinance are not sanctioned if they correct them by 30 May 2009.

[Sources: Official Gazette no. 249 dated 14 April 2009, Official Gazette no. 254 dated 16 April 2009]

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