

# Tax & Legal Alert

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## Changes to the Fiscal Code Methodological Norms

On 30 April 2009 Government Decision no. 488 ("the Decision") was published, amending and supplementing the Norms for the application of Law no. 571/2003 on the Fiscal Code. The decision was issued for the application of Emergency Ordinance nr. 34/2009 which amended the Fiscal Code in relation to profit tax, micro-companies tax and value added tax ("VAT").

Among the most important amendments we mention:

Change	Norms provisions
<b>Annual minimum tax</b>	<p>Taxpayers obliged to pay the minimum tax must calculate the profit tax and the minimum tax, compare them and then pay the tax at the higher amount. The following measures and rules apply:</p> <ul style="list-style-type: none"><li>▪ <i>For the second quarter of 2009</i>, the comparison is made between the tax due and the minimum tax for the month of May and June calculated by dividing the annual minimum tax by six.</li><li>▪ <i>Taxpayers in temporary inactivity</i>, registered in the Trade Register, do not pay annual minimum tax. In addition, taxpayers who were inactive on 1 May 2009 and become active during 2009, and taxpayers for the calendar year they were established do not pay annual minimum tax.</li><li>▪ <i>Taxpayers established during 2009</i> through a reorganisation transaction pay an annual minimum tax from the date of registration at the Trade Register. In the case of a merger, the minimum annual tax is determined by taking into account the sum of the annual revenues of the participating companies. In the case of a spin off, the total annual income is determined in proportion to the value of assets and liabilities transferred by the assignor legal person through the project.</li></ul>
<b>Vehicle expenses deductibility limitations</b>	<p>Terms and expressions used in the 34/2009 emergency Ordinance regarding the deductibility rules for vehicle expenses when calculating profit tax and individual income tax are clarified by reference to the definitions in the VAT chapter, which we mention below.</p>
<b>VAT deduction limitations</b>	<p>The categories of exempted vehicles are defined as follows:</p> <ul style="list-style-type: none"><li>• <i>Vehicles used only for repair and / or intervention</i> Vehicles that can be equipped or not with specific equipment, with specialist personnel to repair goods, and used in intervention activities;</li><li>• <i>Vehicles used exclusively for safety and security</i> Vehicles used for ensuring targets' safety, values and property against any unlawful action which affects ownership, their structure, and protecting individuals against any hostile acts which may endanger their life, physical well-being or health;</li><li>• <i>Vehicles used exclusively for shipping</i> Vehicles designed to receive, transport and distribute letters and packages;</li><li>• <i>Vehicles used solely as media vans</i></li></ul>

	<p>Includes road vehicles specially fitted to accommodate specific equipment for audio-video transmission or complex video, audio and / or data transfer through radio waves or optical media. This includes being able to broadcast television productions or radio recorded or live or from a distance the signal of a television production or radio through radio technology frequency (satellite transmission) or through fibre optics to other media vans or a telecommunication centre or broadcasting headquarters;</p> <ul style="list-style-type: none"> <li>• <i>Vehicles intended solely for sales agents</i> Vehicles used by employees dealing mainly with marketing activity, merchandising, negotiating terms of sale, conducting the sale of goods, after-sale services and customer monitoring. Tax deductibility is limited to one vehicle for each sales agent. This category includes test-drive vehicles used by car dealers;</li> <li>• <i>Vehicles used exclusively for transporting personnel to and from the place of work</i> Vehicles used by employers to transport employees for the purpose of their economic activity to and from their residences / mutually agreed places to the place where work is carried out or to and from employee residences / mutually agreed places to work locations clearly difficult to reach by other means of transport. There also has to be a collective agreement between the employer and the employee obliging the employer to provide free transportation;</li> <li>• <i>Vehicles used exclusively by staff recruitment employment agents</i> Vehicles used by agencies dealing primarily with recruitment and employment. Tax deductibility is limited to one vehicle for each recruitment agent;</li> <li>• <i>Vehicles used for providing paid services</i> Vehicles which are essential for the direct delivery of paid services, without which the services cannot be provided.</li> </ul>
<b>Revaluation reserves</b>	<p>It is indicated that there is no change to the fiscal treatment of reserves representing surplus achieved in the revaluation reserve of fixed assets, including land, made after 1 January 2004, in account &lt;&lt;1065&gt;&gt; on 30 April 2009. These reserves still remain taxable at the time of transfer according to Article 22 par. (5) of the Fiscal Code.</p>

[Sources: Official Gazette no. 286 dated 30 April 2009]

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