

# Tax and Legal Alert

ROMANIA 21 September 2007

## Ordinance regulating financial and fiscal measures

### Contacts:

#### Sorin David

Partner

E-mail: sorin.david@david-baias.ro

Tel: + 40212028770

#### Dan Dascalu

Partner

E-mail: dan.dascalu@david-baias.ro

Tel: + 40212028770

#### D&B David si Baias

Opera Center

1-5 Costache Negri Street

5th District, Bucharest

Tel: + 40212028500

#### Peter de Ruiter

Partner

E-mail: Peter.deRuiter@ro.pwc.com

#### Mihaela Mitroi

Partner

E-mail: Mihaela.Mitroi@ro.pwc.com

#### Ionut Simion

Partner

E-mail: Ionut.Simion@ro.pwc.com

#### PricewaterhouseCoopers Romania

Opera Center

1-5 Costache Negri Street

5th District, Bucharest

Tel: + 40212028500

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Government Ordinance no. 46/2007 regarding certain financial and fiscal measures was published in Official Gazette no. 603/31.08.2007. The Ordinance brings amendments to the Fiscal Procedure Code, Government Emergency Ordinance no. 28/1999 regarding the obligation for certain traders to use electronic cash registers and Government Ordinance no. 75/2001 regarding the implementation of the fiscal record.

Some of the major amendments brought to the Fiscal Procedure Code are:

- The Ordinance provides for the functioning of the fiscal procedure Commission, which is responsible for issuing decisions on the consistent application of legislation within the remit of the National Tax Administration Agency ('ANAF');
- It also provides the possibility of publishing cases of non-compliance with the financial-fiscal legislation in the media;
- The fiscal authority has the right to require information or documents from anyone with an economic or legal relationship with the taxpayer, regardless of whether the fiscal status has been clarified or not by the taxpayer;
- For tax declarations submitted electronically, the date of submission is considered to be the date of registration on the fiscal authority internet page, as

evidenced by the electronic confirmation transmitted after receipt of the declaration;

- The annual tax returns of legal entities have to be certified by a fiscal consultant, unless the law requires returns to be audited;
- The Ordinance confirms the general territorial competence of the central fiscal inspection bodies of ANAF;
- It is no longer mandatory to obtain the fiscal certificate for ownership transfers of real estate and means of transportation performed during enforcement, insolvency or liquidation procedures.
- From 1 January 2008, payment of duties, taxes, contributions and other charges to the state consolidated budget, defined by order of the ANAF president, are to be made by taxpayers to a unique account, from which the amounts will then be distributed to the relevant budgets or funds by the competent fiscal authority. If the amounts paid do not cover all the outstanding tax liabilities, withholding taxes and contributions are settled first, with other taxes then being settled proportionally.

Taxpayers without outstanding tax liabilities who pay their full tax obligations within the statutory time-limits can apply this legal provision from the payment of the tax liabilities for September 2007.

- Taxpayers' tax receivables are offset against their tax liabilities to the

same budget, while the balance is offset pro rata against other tax liabilities;

- It was expressly provided that late-payment penalties for tax liabilities do not apply once insolvency procedures have commenced, regardless of when the liabilities were assessed;
- Enforcement commenced against debtors' assets is to be made, as a rule, within the limit of 150% of the amount of the tax liabilities, including enforcement costs;
- The Ordinance provides for a mandatory order in which the debtor's assets should be seized and sold during the enforcement procedure;
- The tax authorities must decide to withdraw all enforcement measures within two days of the enforcement procedure being terminated;
- Withholding taxes and related penalties cannot be discharged by payment in assets ("dare in plata" in Romanian) during the enforcement procedure.
- Tax challenges for amounts exceeding RON 1,000,000, those filed against acts issued by central administrative authorities or filed by major taxpayers, having as object taxes, contributions or custom debt, fall within the jurisdiction of the General Direction for Settlement of Tax Challenges organised within ANAF;
- Most of the amendments to the Fiscal Procedure Code entered into force on 3 September 2007,

except for those with an established later entry into effect (but no later than 1 January 2008).

Amendments to Government Emergency Ordinance no. 28/1999 regarding the obligation of economic operators to use electronic cash registers:

- The use of electronic cash registers is required for:
  - economic activities performed independently by freelancers (with the exception of liberal professionals such as physicians, lawyers, notaries etc.), directly to consumers;
  - sale of durable goods;
  - sale of goods and the rendering of services which are not paid for entirely in cash or not paid entirely at the moment of delivery;
- Users of electronic cash registers are obliged to record in a special register any personal amounts held by the employees and / or by the company director. In addition, the coins and notes for the float have to be put in electronic cash registers at the start of each day;
- Users of electronic cash registers are no longer required to submit monthly fiscal memory reports;
- Issuing fiscal receipts with inaccurate information is an offence.

Amendments to Government Ordinance no. 75/2001 regarding fiscal record:

- The fiscal record of the new shareholders has to be presented for sales of shares, as well as by new legal representatives and the new shareholders for share capital increase operations;

- The fiscal record certificate is issued immediately and is valid for 30 days from the date of issuance. The issuance fee is RON 20 per person.

[Source: Official Gazette no. 603, dated 31 August 2007]

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For more information on the amendments to the Fiscal Procedure Code, please contact Sorin David or Dan Dascalu.

For more information on the amendments to Government Emergency Ordinance no. 28/1999 and to Government Ordinance no. 75/2001, please contact Peter de Ruiter, Mihaela Mitroi or Ionut Simion