

# Legislative Alert



## In this issue:

---

- Fiscal Code
  - Fiscal procedure
  - Accounting
  - Audit
  - Banking
  - Insurance
  - Leasing
  - Sponsorship
  - Social Security
  - Work permits
  - Customs
  - Oil and Energy
  - Miscellaneous
- 

*This update is correct to the best of our knowledge and belief at the time of issue. It is, however, written as a general guide so it is recommended that specific professional advice is sought before any action is taken.*

**For additional information,  
please contact:**

**Venkatesh Srinivasan,  
Partner  
Ernst & Young SRL  
75 Dr. N. Staicovici Street  
Sector 5, Bucharest  
Tel: (40-21) 402 4000  
Fax: (40-21) 410 7052**

## FISCAL CODE

### **Emergency Ordinance 123/2004 amending Law 571/2004 regarding the Fiscal Code**

(Official Gazette 1.154 / 7 December 2004)

We have summarised the provisions of this Emergency Ordinance in our Tax Flash no. 22 / 8 December 2004.

### **Emergency Ordinance 138/2004 amending Law 571/2004 regarding the Fiscal Code**

(Official Gazette 1.281 / 30 December 2004)

We have summarised the provisions of this Emergency Ordinance in our Tax Flash no. 1 / 5 January 2005.

### **Government Decision 2.164/2004 regarding the approval of the criteria and necessary documentation for obtaining individual advance tax rulings**

(Official Gazette 1.194 / 14 December 2004)

We have summarised the provisions of this Government Decision in our Tax Flash no. 25 / 16 December 2004.

### **Government Decision 2.255/2004 establishing the environmental protection equipment acquired for treatment of wood waste, exempt from VAT upon importation**

(Official Gazette 1.209 / 16 December 2004)

The Decision provides the list of the environmental protection equipment used for treatment of wood waste (customs code '847930'), which is exempt from VAT upon importation as per Art. 142 letter j) of Law 571/2003 regarding the Fiscal Code.

The Decision is applicable until 31 December 2004.

**Order 1.895/2004 approving Decision 10/2004 of the Central Fiscal Commission for the unitary application of certain provisions regarding VAT and excise duties**

(Official Gazette 1.278 / 30 December 2004)

In case of invoices which may not be cashed due to the bankruptcy of the client, the adjustment of the VAT taxable base may be performed only if the bankruptcy has been declared after 1 January 2004 (the invoices issued by the respective clients prior to 1 January 2004 are included).

The Decision provides for the holders of authorisations for the purchase of mineral oils the possibility to offset the approved quantities of similar mineral oils acquired from individual fiscal production warehouses administrated by the same authorised warehouse entity (Rom. antrepozitar autorizat).

#### **FISCAL PROCEDURE**

**Order 1.600/2004 amending Order 300/2004 approving the declarations for fiscal registration and the application form for the registration of fiscal domicile**

(Official Gazette 1.229 / 21 December 2004)

The Order provides the new form and content of certain fiscal forms and the related filling-in instructions:

- Fiscal registration declaration / Amendments declaration for legal entities, family associations and associations without legal personality (010);
- Fiscal registration declaration / Amendments declaration for Romanian individuals (020);
- Fiscal registration declaration / Amendments declaration for foreign individuals (030);
- Application for the registration of the fiscal domicile of taxpayers (050).

Separately, the Order introduces the Fiscal registration declaration / Amendments declaration for secondary premises (060) to be filed with the fiscal authorities only in case of secondary premises that, according to the law, have to pay their tax liabilities.

The Order is applicable starting 1 January 2005.

**Order 1.926/2004 approving Decision 9/2004 of the Central Fiscal Commission regarding the unitary application of certain provisions of the Fiscal Procedural Code**

(Official Gazette 1.273 / 30 December 2004)

The Order provides that no late payment liabilities would be applicable for secondary premises of a taxpayer performing payments to the general consolidated budget using the fiscal identification number of the taxpayer but submitting the related fiscal declarations inconsistent with the payment details (i.e. indicating the fiscal identification number of the secondary premises or an inadequate budgetary account where the taxes should be transferred).

Separately, the Order clarifies the status of the compensatory payments provided based on the company's collective labour contract.

**Order 1.846/2004 regarding the extension of certain deadlines provided by Order 1.713/2004 regarding the organisation of the activity for the administration of large taxpayers**

(Official Gazette 1.263 / 28 December 2004)

According to the Order, the administration of large taxpayers will be transferred starting 1 April 2005 from the County Directions of Public Finance to the General Direction of Bucharest used for administration of large taxpayers.

**Order 1.870/2004 approving the Instructions for the filling in of the tax payment number**

(Official Gazette 1.256 / 27 December 2004)

The Order provides details about the payment number automatically generated by a specialised software used by taxpayers upon drafting their fiscal declarations or payment orders. The payment number must be mentioned on the payment documents used for the settlement of fiscal obligations.

## ACCOUNTING

**Order 1.753/2004 approving the norms for the organisation and performance of the inventory count**

(Official Gazette 1.174 / 13 December 2004)

The Order provides the procedures to be followed in respect of the organisation and performance of the inventory count of assets and liabilities. The inventory count is mandatory in the following situations:

- beginning of a company's activities;
- during the activities, at least once a year;
- upon mergers or the cessation of the activities;

- upon the request of the control bodies;
- there is evidence of differences in the inventory that cannot be accurately established;
- handing – taking over procedures in respect of an inventory administration;
- reorganisation of inventory administrations;
- natural disasters or force majeure;
- other situations specifically provided by the law.

The Order repeals Order 2.388/1995 which approved the former inventory count norms. Furthermore, the Order repealed all the derogations from the rule regarding the annual inventory count.

**Order 1.840/2004 approving the clarifications regarding certain measures to be taken for the application of Law 348/2004 regarding the denomination of the national currency**

(Official Gazette 1.247 / 23 December 2004)

The Order provides modalities for harmonisation of the accounting and financial reporting systems within the process of denomination of the national currency (to be performed starting 1 July 2005).

## AUDIT

**Decision 35/2004 for the establishment of the Department for Internal Audit**

(Official Gazette 1.245 / 23 December 2004)

The Decision approved by the Council of Financial Auditors from Romania establishes the attributions of the newly created Department for Internal Audit and lists the Standards to be used by the internal auditors those drafting, actualisation and implementation represent key tasks of the mentioned department.

**Decision 36/2004 for the adoption of the International Standards for Internal Audit, edition 2004, issued and published by the Institute of Internal Auditors, including the General Framework of the International Standards for Internal Audit**

(Official Gazette 1.245 / 23 December 2004)

According to the Decision, the International Standards for Internal Audit (including General Framework for Internal Audit Standards), edition 2004, issued and published by the Institute of Internal Auditors as Standards for Internal Audit are adopted as national Internal Audit standards. The professionals performing internal audit activities should observe the mentioned standards. The Romanian Chamber of Financial Auditors shall verify and monitor the compliance with the mentioned standards.

## BANKING

### **NBR Circular 26/2004 amending NBR Regulation 6/2002 regarding the regime of minimum mandatory reserves**

(Official Gazette 1.140 / 2 December 2004)

The Circular completes Regulation 6/2002 with provisions regarding the set-up of minimum mandatory reserves in case of mergers or split-ups of credit institutions.

### **Circular 27/2004 regarding the reference interest rate level for December 2004, as announced by the National Bank of Romania**

(Official Gazette 1.157 / 7 December 2004)

The reference interest rate for December 2004 is set at 17.96% per annum.

### **NBR Norm 15/2004 regarding the principles for supervision on a consolidated basis of credit institutions**

(Official Gazette 1.276 / 30 December 2004)

The current norm establishes the credit institutions/groups subject to the consolidated supervision in Romania, as well as the methods and the data to be used for consolidated supervision purposes. Additionally, details are provided in relation to the effective application of the prudential requirements on a consolidated basis.

### **NBR Norm 14/2004 for the amendment of NBR Norms 4/2001 regarding the supervision of the foreign exchange positions of banks**

(Official Gazette 1.259 / 27 December 2004)

The norm provides for additional requirements for the computation of the foreign exchange positions of banks that hold (entirely or partially) social capital (are related share premiums) in foreign currency.

## INSURANCE

### **Law 503/2004 regarding financial recovery and bankruptcy of insurance companies**

(Official Gazette 1.193 / 14 December 2004)

The Law provides for procedures to be followed by insurance companies in case of their financial recovery or bankruptcy. Such provisions do not apply to insurance intermediaries/brokers, the latter being subject to the common regulations in the area of reorganisations and bankruptcies, as provided by Law 64/1995 regarding the procedure for reorganisation and bankruptcy, as amended and republished.

The Law is enforced in 30 days from its publication in the Official Gazette.

**Order 3.109/2004 for the application of the norms regarding the update of the minimum threshold for the paid-in share capital of the insurance companies**

(Official Gazette 1.243 / 23 December 2004)

The Order provides the time schedule for the gradual increase of the paid-in share capital of insurance companies. The minimum share capital must be increased gradually up to the established minimum levels to be reached until 30 June 2005, 31 December 2005 and 30 June 2006.

**Order 3.110/2004 for the application of the norms regarding the authorisation of insurance/reinsurance brokers**

(Official Gazette 1.243 / 23 December 2004)

The Order approves the norms for the autorisation of insurance and reinsurance brokers. Upon entering into force of the Order (in 3 days from the publication in the Official Gazette), Order 4/2001 and Order 3.108/2003 of the Commission for Supervision of Insurance Activity shall be repealed.

**Order 3.111/2004 for the application of the norms regarding the information that should be provided by the insurance companies and insurance intermediaries to their clients**

(Official Gazette 1.243 / 23 December 2004)

The Order provides the minimum mandatory information about the insurer and the insurance contract to be provided to insured persons before the conclusion of an insurance contract. In case of insurance intermediation companies, additional mandatory information regarding the insurance broker/agent must be provided.

## LEASING

**Law 533/2004 amending Government Ordinance 51/1997 regarding lease operations and leasing companies**

(Official Gazette 1.135 / 1 December 2004)

According to the law, the right to use of software programs can be subject to leasing operations as long as the owner of the mentioned rights authorised such operations. The leasing contracts having as object the right to use of software programs are assigned with fully binding and enforceable power in certain cases. The current provisions are applicable starting the date of publication in the Official Gazette.

## SPONSORSHIP

**Order 1.759/5.371/2004 approving the norms for application of Law 376/2004 regarding the private scholarships**

(Official Gazette 1.151 / 6 December 2004)

The current norms detail the fiscal treatment of the scholarship expenses incurred both by profits tax and income tax payers.

Separately, the Order provides for the contractual rules that should be satisfied by the parties involved in a private scholarship arrangement (including the draft of the sponsorship contract).

## SOCIAL SECURITY

**Law 534/2004 approving Emergency Ordinance 59/2004 for the amendment of Law 19/2000 regarding the public pension system and other social security rights**

(Official Gazette 1.135 / 1 December 2004)

The Law approves without significant changes the amendments to Law 19/2000 introduced by Emergency Ordinance 59/2004.

**Emergency Ordinance 139/2004 amending Art. 26 paragraph (1) of Law 512/2004 regarding social security budget for year 2005**

(Official Gazette 1.280 / 30 December 2004)

We have summarised the provisions of this Emergency Ordinance in our Tax Flash no. 2 / 5 January 2005.

**Law 583/2004 approving Government Ordinance 93/2004, which modified Emergency Ordinance 150/2002 regarding the health insurance system**

(Official Gazette 1.228 / 21 December 2004)

According to the Law, the health insurance contribution for persons who are on childcare leave (born from the state social security budget) will be of 6.5% applied to two base minimum gross salaries.

**Emergency Ordinance 129/2004 modifying Law 346/2002 regarding the insurance for work accidents and professional illnesses**

(Official Gazette 1.228 / 21 December 2004)

According to the Emergency Ordinance, the deadline for the payment of contributions for work accidents and professional illnesses insurance will be the 25<sup>th</sup> of the month following the month for which the salary income is due.

**Law 580/2004 amending Law 76/2002 regarding the unemployment insurance system and stimulation of employment**

(Official Gazette 1.214 / 17 December 2004)

The Law provides new incentives for companies maintaining their employment relationships with the graduates after the 3-years threshold period, as imposed by Law 76/2002. Law 76/2002 provides certain tax benefits for companies employing graduates under the condition to maintain such employment relationships for a minimum period of 3 years.

**WORK PERMITS**

**Government Decision 2.385/2004 establishing of the number of work permits issued to foreigners in 2005**

(Official Gazette 1.279 / 30 December 2004)

The number of new work permits to be issued to foreigners for year 2005 is of 2.500.

**CUSTOMS**

**Order 115/1.838/2004 for the amendment of the list of technological equipment, installations, devices for measurement and control, hardware and software imported, which are exempt from payment of customs duties according to Order 228/1.437/2001, as amended**

(Official Gazette 1.250 / 24 December 2004)

The Order provides an additional list of equipment, installations, devices for measurement and control, hardware and software that are exempt from payment of customs duties upon the application of the provisions of Law 332/2001 regarding the investments with significant impact on the economy.

**Government Decision 2.169/2004 regarding the exemption or temporary reduction of customs duties upon importation of certain categories of goods during the year 2005**

(Official Gazette 1.233 / 21 December 2004)

The Decision lists the imported goods benefiting from the customs duty's exemption or reduction during the year 2005.

## OIL AND ENERGY

### **Government Decision 2.075/2004 approving the norms for the application of Oil Law 238/2004**

(Official Gazette 1.170 / 10 December 2004)

The Decision approves the norms for the application of Oil Law 238/2004. Upon the entering into force of the Decision, Art. 1 and the Appendix to Government Decision 1.265/1996 regarding the norms for the application of Law 134/1995 (the former Oil Law) will be repealed.

### **Law 529/2004 approving Ordinance 89/2004 regarding certain measurements for the computation and efficient use of revenues related to the delivery of energy**

(Official Gazette 1.149 / 6 December 2004)

According to the Law, the companies producing, transporting or delivering electric and heat energy should establish reserves at the level of 6%, respectively 2% of the revenues obtained from the production, transport and supply of electric energy, respectively heat energy.

## MISCELLANEOUS

### **Government Decision 2.100/2004 approving the mechanisms for granting state financial aid within the application of the Program for promotion of exports managed by the Ministry of Economy and Trade**

(Official Gazette 1.147 / 3 December 2004)

The Decision replaces former Decision 64/2003 regarding the mechanisms for granting the state financial aid within the Program for promotion of export administrated by the Department of Foreign Trade and details the new instruments to be used by the Ministry of Economy and Trade for sustaining the export activities of Romania. The Decision enters into force starting its publication in the Official Gazette.

### **Government Decision 2.185/2004 approving the norms for the application of Art. 5 and Art. 6 of Government Ordinance 15/1996 regarding the financial and foreign exchange discipline**

(Official Gazette 1.224 / 20 December 2004)

The Order provides new rules and limits regarding cash transactions performed by companies (including branches, work points, representative offices, associations of tenants that have opened bank accounts on their name as well as run their own teller). The individuals, authorised individuals or individuals performing liberal activities, individual agricultural producers as well as the cash transactions made in foreign currency are not subject to the current provisions. Moreover, payments

through bank cards are not considered cash payments and are not subject to limitations mentioned below.

According to the Decision, the maximum threshold for cash payments is increased to the level of ROL 100 million. The companies are allowed to make cash payments to one single supplier up to the amount of ROL 50 million. The Law forbids the fragmented cash payments to suppliers of goods and services for invoices exceeding ROL 50 million (for cash payments made to cash & carry suppliers the threshold is established to ROL 100 million).

Invoices exceeding ROL 50 million and, respectively, ROL 100 million (for cash & carry suppliers) not settled by 20 December 2004 (the date when the Decision entered into force) are payable only through payment instruments.

The advances granted to employees for various payments are considered for the computation of the daily threshold of cash payments, being subject to the limitations provided above.

Separately, no limitation is provided for the total amount of cash received daily by a company. However, the daily cash receipts from one legal person may not exceed ROL 50 million.

**Order 1.779/2004 regarding the application of Government Decision 831/1997 approving the general forms used for the financial and accounting activity and the norms for their preparation and use**

(Official Gazette 1.165 / 9 December 2004)

According to the Order, the invoices may be issued only in two copies (and not three copies as it is usually required) in the following two additional circumstances:

- the information system used for the issue, dispatch, storage and archiving of electronic fiscal invoices was audited by an independent and authorised auditor and an audit report has been prepared in this respect;
- the number of invoices issued monthly by the company is greater than 25,000.

**Law 569/2004 approving Emergency Ordinance 75/2004 which amended Law 359/2004 regarding simplification of registration formalities with Trade Registry and fiscal authorities in case of individuals, family associations and legal entities, as well as of the authorisation of legal entities**

(Official Gazette 1.196 / 14 December 2004)

The Law approved Emergency Ordinance 75/2004 (Official Gazette no. 932/2004) without amendments.

**Government Decision 2.184/2004 amending Government Decision 357/2004 regarding granting of state aid within the Program for the increase of competitiveness of industrial products**  
(Official Gazette 1.214 / 17 December 2004)

Further to the amendments brought by the Decision, the maximum state aid granted to qualifying entities operating in the manufacturing industry (as per Decision 357/2004) was increased from EUR 50,000 to EUR 90,000. Furthermore, and the minimum state aid was increased from EUR 2,500 to EUR 5,000.