

November 2011



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Regulation for issuance of green certificates

(Order of the president of the National Authority for regulation in Energy Field no. 43/2011 for approval of the Regulation for issuance of green certificates, published in Official Gazette no. 768 of 1 November 2011)

- ❖ The regulation for issuance of green certificates applies to:
 - ❖ the transport and system operator, as issuer of certificates;
 - ❖ economic operators accredited by ANRE in order to benefit from the system of promotion through green certificates;
 - ❖ network operators for the networks to which the power plants producing electricity from renewable sources are connected, with the view to confirm the production of electricity from renewable energy sources, delivered by them via electrical networks.

Amendments regarding the free circulation on the territory of Romania of the citizens of the EU Member States, European Economic space and Swiss Confederation

(Government Emergency Ordinance no. 102/2005 republished regarding the free circulation on the territory of Romania of the citizens of the EU Member States, European Economic space and Swiss Confederation, published in Official Gazette no. 774 of 2 November 2011)

- ❖ The ordinance establishes the conditions for exerting the right to free circulation, to residency and permanent residency on the territory of Romania, as well as the limits for exerting such rights taking into account the public order, national security or public health of the citizens of the EU Member States, European Economic space and Swiss Confederation.
- ❖ Emergency Ordinance no. 102/2005 repeals Law no. 309/2004 regarding the free circulation on the territory of Romania of citizens of the EU Member States and European Economic space.

Amendments regarding the application and issuance procedure for the certificate attesting the space used as social headquarter

(Order of the president of the National Agency for Tax Administration no. 3.374/2011 for the amendment of point 8 of Annex no. 1 of the Order of ANAF's president no. 2.112/2010, published in Official Gazette no. 779 of 4 November 2011)

- ❖ The deadline for settlement of the request for registering the document attesting the usage right for the space used as social headquarter and for issuance of the related certificate, along with the complete documentation provided by Order no. 2.112/2010 is reduced from five working days to **two working days** since the date of registration with the relevant tax authority.

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Cancellation/decrease of late payment penalties and late payment interest for certain tax liabilities outstanding as at 31 August 2011

(Order of National Health Insurance House no. 894/2011 regarding the application of the provisions of art. XI of Government Ordinance no. 30/2011 for the amendment and completion of Law no. 571/2003 regarding the Fiscal Code, as well as for regulation of certain financial – fiscal measures, published in Official Gazette no. 787 of 7 November 2011)

- ❖ The provisions of the Order are applicable for the tax liabilities representing health social security contributions owed to the Unique National Fund for health social security contributions by individuals, other than the ones for which the revenues are collected by the National Agency for Tax Administration.
- ❖ Therefore, for the ancillary payment obligations related to the principal tax liabilities outstanding as at 31 August 2011, the following facilities are granted:
 - ❖ late payment penalties are cancelled and late payment interest are reduced with 50% if the principal liabilities and related interest are paid or offset until 31 December 2011;
 - ❖ late payment penalties are reduced with 50% and late payment interest are reduced with 25% if the principal liabilities and related interest are paid or offset until 30 June 2012.
- ❖ The definitions for “principal obligations outstanding as at 31 August 2011”, “interest related to principal liabilities” and “principal liabilities” are introduced.
- ❖ The fiscal facilities (cancellation or decrease) are granted for the late payment interest due for the period 1 January 2006 – 30 June 2010.
- ❖ The fiscal facilities are not granted for tax liabilities offset through enforcement or through amounts obtained from selling sequestered goods.
- ❖ In order to benefit from these tax facilities, taxpayers have to submit an application requesting a statement of their eligible outstanding tax liabilities that are to be settled in order to meet the conditions for granting the tax facilities, as well as those tax liabilities covered by this tax facility.
- ❖ The present Order approves the model of the Decision for cancellation of late payment penalties and of the Decision for decrease of late payment penalties.

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Amendments regarding the facts registered in taxpayers' fiscal record, in accordance with the legislation in force

(Decision no. 1.078/2011 regarding the amendment of the appendix to the Methodological Norms for application of Government Ordinance no. 75/2001 regarding the organisation and functioning of the fiscal record, approved by Government Decision no. 31/2003, published in Official Gazette no. 791 of 8 November 2011)

- ❖ The decision amends and replaces the appendix to the Methodological Norms for application of Government Ordinance no. 75/2001 regarding the organisation and functioning of the fiscal record.
- ❖ The provisions regarding the facts representing contraventions related to the regime of excisable products, in accordance with the provisions of the Fiscal Procedure Code (letter O from the annex), will be applicable until 1 January 2012, as starting this date the facts considered contraventions in relation to the regime of excisable products, in accordance with the provisions of the Fiscal Code (letter P from the annex), will enter into force.

Approval of the form for reporting the consumption of drugs

(Order no. 1.518/890/2011 for approval of the form for reporting the consumption of drugs, published in Official Gazette no. 791 of 8 November 2011)

- ❖ The Order approves the reporting form for reporting the consumption of drugs which has to be submitted on soft copy until the 15th of the current month for the previous month by sanitary units having beds and dialysis centres having contractual arrangements with health insurance houses.
- ❖ In addition to this form, a centralized situation has to be submitted on hard copy.

Approval of form 170

(Order of ANAF's president no. 3.395/2011 for approval of the Inventory-Statement regarding the quarterly contributions due for the drugs that are borne from the National Unique Fund for Health Insurance and from the budget of Health Ministry, outstanding as at 1 October 2011, published in Official Gazette no. 794 of 9 November 2011)

- ❖ The Order approves the model and content of form 170 "Inventory-Statement regarding the quarterly contributions due for the drugs that are borne from the National Unique Fund for Health Insurance and from the budget of Health Ministry, outstanding as at 1 October 2011".
- ❖ The form had to be submitted until 25 November 2011 with the tax authority where the taxpayer is registered.

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Amendments regarding the general employee register

(Government Decision no. 1.105/2011 for the amendment of Government Decision no. 500/2011 regarding the general employee register, published in Official Gazette no. 798 of 10 November 2011)

- ❖ According to the provisions of Government Decision no. 1.105/2011, gross monthly base salary and bonuses (before, salary, bonuses and their amount), as provided by the individual labour contract, have to be included in the Register until 15 December 2011, inclusively for the individual labour contracts already registered.

New provisions regarding the organisation and functioning of the economical – financial audit performed at the level of economic operators

(Emergency Ordinance no. 94/2011 regarding the organisation and functioning of the economical – financial audit performed at the level of economic operators, published in Official Gazette no. 799 of 11 November 2011)

- ❖ The ordinance regulates the economical – financial audit performed at taxpayers' level.
- ❖ The notions of “mandatory provision”, “financial management control”, “budget receivable”, “economical-financial audit”, “economic operator” and “amounts granted from the general consolidated budget” are defined.
- ❖ In accordance with the provisions of the ordinance, the notion of economic operator comprises:
 - ❖ Autonomous administrations, set up by the state or by an administrative-territorial unit;
 - ❖ National companies and firms, as well as companies where the state or an administrative-territorial unit is the unique shareholder;
 - ❖ Companies to which the state or an administrative-territorial unit holds the majority participation;
 - ❖ Companies and autonomous administrations to which the above mentioned legal entities hold directly or indirectly a majority participation;
 - ❖ National research-development institutes, other than the ones functioning as public institutions;
 - ❖ Other economic operators, irrespective of the form of property, for substantiating and justifying the amounts granted by the general consolidated budget;
 - ❖ The notion does not include the financial-banking companies, insurance companies and “Fondul Proprietatea” – SA.

- ❖ The statute of limitation for the right of the economic-financial inspectors to establish obligations for economic operators is of 5 years since the end of the financial year.



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New provisions regarding the organisation and functioning of the economical – financial audit performed at the level of economic operators (continued)

- ❖ The notification of the economic operator with respect to the economic-financial audit to be performed is made through a formal notice which is communicated to the taxpayer before the commencement of the audit, as follows:
 - ❖ with 30 days before, for large taxpayers; and
 - ❖ with 15 days before, for the rest of the economic operators.
- ❖ The date of commencement of the economical-financial audit is the date mentioned in the unique control register.
- ❖ The duration of the economical-financial audit cannot exceed 6 months for large taxpayers and 3 months for the rest of the economic operators. However, the periods of suspensions are not included in the computation of the duration.
- ❖ The financial audits not finalised at the date when the present Emergency Ordinance enters into force will be continued in accordance with the provisions in force when the audit was started.
- ❖ The ordinance also regulates the following:
 - ❖ attributions and rights of the economical-financial inspectors;
 - ❖ methods for performing the economical-financial audit;
 - ❖ control methods that can be applied during the economical-financial audit;
 - ❖ limits for fines that can be applied to economic operators subject to audit or to responsible individuals (as the case may be).
- ❖ At the date of entering into force of the present Emergency Ordinance, Law no. 30/1991 regarding the organisation and functioning of financial audits and of the Financial Guard will be repealed.

Provisions regarding the estimation of the taxable base

(Order no. 3.389/2011 regarding the estimation of the taxable base, published in Official Gazette no. 804 of 14 November 2011)

- ❖ According to the order, tax inspectors can estimate the taxable base for taxes, contributions and other amounts owed to the general consolidated budget in case:
 - ❖ the documents and information presented during a tax audit are incorrect or incomplete; or
 - ❖ the requested documents and information do not exist or they are not provided to the tax inspectors.

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Provisions regarding the estimation of the taxable base (cont'd)

- ❖ The order regulates the methods for estimating the revenues and related expenses, as well as the elements having to be considered by the tax inspectors when selecting the method.
- ❖ The methods that can be used for estimating the taxable base are the following:
 - ❖ the source funds and funds spent method;
 - ❖ the cash-flow method;
 - ❖ the margin method;
 - ❖ the product/service and volume method;
 - ❖ the net patrimony method.
- ❖ The conditions for selecting the method used for estimating the taxable base will be mentioned in an explanatory memorandum.

Procedure for ex officio determination of taxes and contributions

(Order no. 3.392/2011 for approval of the procedure for ex officio determination of taxes and contributions through self-taxation or withholding, published in Official Gazette no. 816 of 18 November 2011)

- ❖ The order approves the procedure for ex officio determination of taxes and contributions through self-taxation or withholding.
- ❖ The provisions of the order are not applicable to tax liabilities determined further to a tax audit or to individuals for their income tax and neither to tax liabilities which were subject to a tax audit.
- ❖ The form and content of the following documents are also approved:
 - ❖ "Report regarding ex-officio taxation";
 - ❖ Form 160 "Decision of ex-officio taxation for taxes and contributions, through self-taxation or withholding";
 - ❖ Decision for cancelation of the decision for ex-officio determination of taxes.
- ❖ According to the procedure provided by the Order, taxpayers will be notified of the late submission of tax returns within 15 days since the legal deadline is exceeded. Subsequently, the list of the taxpayers which did not fulfill their submission requirements will be updated, within 20 days since the notification date.
- ❖ The order provides specific procedures for ex-officio determination of taxes and contributions, except for VAT, as well as for ex-officio determination of VAT.

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Amendment of the protocol between the Government of Romania and the Government of the Democratic Republic of Korea

(Law no. 215/2011 for the ratification of the Protocol between the Government of Romania and the Government of the Democratic Republic of Korea regarding the bilateral agreements concluded during 1956 – 1989, signed at Phenian on 20 January 2011, published in Official Gazette no. 819 of 21 November 2011)

- ❖ The law establishes the list of agreements remaining into force and the list of agreements which are repealed in respect of the relations between Romania and the Democratic Republic of Korea.

Amendments regarding the criteria conditioning the VAT registration

(Order no. 2.795/2011 regarding the criteria conditioning the VAT registration, published in Official Gazette no. 824 of 22 November 2011)

- ❖ The Order establishes the criteria conditioning the VAT registration of companies subject to registration with the Trade Registry that apply for VAT registration under the provisions of art. 153 para. (1) let. a) and c) of the Fiscal Code.
- ❖ The order also approves the model, the content and the filling instructions for the VAT registration application (form 098), as well as the related appendix.
- ❖ The persons requesting the VAT registration have to submit to the relevant tax authorities a VAT registration application (provided in appendix no.1 to the order) and the appendix to the registration request (provided in appendix no. 2 to the order) the same day they submit the application for registration with the Trade Registry.
- ❖ In addition, the order establishes the criteria conditioning the registration for VAT purposes, as well as the procedure having to be applied by the competent tax authorities.
- ❖ The applications for VAT registration submitted before 1 December 2011 will be settled in accordance with the previous procedure.
- ❖ The provisions of the order are not applicable to Romanian branches of taxable persons having the place of economic activity outside Romania.
- ❖ The provisions of the order enter into force starting 1 December 2011. Also, starting this date Order of Ministry of Public Finances no. 1.984/2011 is repealed.

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Completions regarding the quarterly reporting of drugs consumption

(Order no. 927/2011 for approval of the model used by health insurance houses for reporting to the National Health Insurance House for the centralised drugs consumption, published in Official Gazette no. 829 of 23 November 2011)

- ❖ According to the provisions of the order, health insurance houses are required to validate on a monthly basis the drugs consumption reported by marketing authorisation holders or by their legal representatives.
- ❖ The order also approves the following forms:
 - ❖ Report for open circuit pharmacies regarding drugs consumption with or without personal contribution, used in the ambulatory treatment based on prescription;
 - ❖ Report on drugs consumption in sanitary units with beds;
 - ❖ Report for dialysis centres on drugs consumption used for dialysis medical services.

Provisions regarding waste regime

(Law no. 211/2011 on waste regime, published in Official Gazette no. 837 of 25 November 2011)

- ❖ The law establishes the necessary measures for protection of environment and health of population, the obligations and costs of waste producers/holders.
- ❖ The substances/elements which do not fall under the scope of this law are mentioned.
- ❖ The law establishes the requirement to capitalize waste, to reuse and recycle, or, in case such operations are not possible, to eliminate waste in safe conditions.
- ❖ According to the present law, the waste producers or holders, traders, brokers and economic operators performing waste treatment activities are required to ensure a record of waste management for each type of waste and to communicate such report to the county agency for environment protection on an yearly basis.
- ❖ The acts considered contraventions and the applicable fines are mentioned.
- ❖ At the date of entering into force of the law, Government Emergency Ordinance no. 78/2000 is repealed.

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Cancellation of the late payment charges for certain ancillary tax liabilities administered by local public authorities, outstanding as at 31 August 2011

- ❖ The provisions of the Order apply for the fiscal liabilities administered by the administrative-territorial units or, as applicable, by the Bucharest administrative-territorial subdivisions, in line with the provisions of article XI of Government Ordinance no. 30/2011 for the amendment and completion of Law 571/2003 regarding the Fiscal Code, as well as for the regulation of certain financial-fiscal measures.
- ❖ Therefore, for ancillary tax liabilities related to the outstanding tax liabilities as at 31 August 2011, the following incentives are granted:
 - ❖ cancellation of 50% of the late payment charges, if the principal tax liabilities and the remaining 50% late payment charges computed until the payment date are settled (by payment or compensation) until 31 December 2011;
 - ❖ cancellation of 25% of the late payment charges, if the principal tax liabilities and the remaining 75% late payment charges computed until the payment date are settled until 30 June 2012.
- ❖ The definitions for “principal tax liabilities outstanding as at 31 August 2011” and “outstanding principal tax liabilities” are introduced.
- ❖ The fiscal facilities are not granted for tax liabilities offset through enforcement or through amounts obtained from selling sequestered goods.
- ❖ In order to benefit from these tax facilities, taxpayers have to submit an application requesting a statement of their eligible outstanding tax liabilities, that are to be settled, as well as those tax liabilities covered by this tax incentive.
- ❖ The present Order approves the model of the Decision for cancellation of receivables.

Amendments and completions regarding the health reform

(Law no. 220/2011 for amendment and completion of Law no. 95/2006 on the health reform, published in Official Gazette no. 851 of 30 November 2011)

- ❖ The law amends and completes Law no. 95/2006 by introducing the “co-payment” system for certain medical services.
- ❖ The categories of insured persons excepted from co-payment, as well as the list of medical services for which co-payment is charged, are set out by the law.

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Amendments and completions regarding the health reform (cont'd)

- ❖ According to the provisions of the law, the amount charged as co-payment during an year cannot exceed the twelfth part of the annual net realized income. Therefore, after reaching this threshold, the medical services are provided without co-payment.
- ❖ The proof of co-payment is made through the health moderator ticket.
- ❖ Complementary voluntary health insurances will bear the cost of the co-payment due by the insurant, in accordance with the law.
- ❖ Within 60 days since Law no. 220/2011 enters into force, the corresponding acts for modifying the framework agreement regarding the conditions for granting medical assistance within the social health insurance system and, respectively, its application norms, will be adopted.



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