

# Legal Bulletin

December 2008

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## Employment

### The social contributions quotas for 2009

Name of the enactment	Government Emergency Ordinance No. 226/2008 on certain financial budgetary measures ("GEO 226/2008")
Publication	Official Gazette of Romania, Part I, No. 899/31.12.2008
Entry into force	31 December 2008
Main provisions	<p>Considering that the state budget law and the state social security budget law for the year 2009 have not yet been adopted, GEO 226/2008 is the enactment which establishes the quotas for the social security and health contributions.</p> <p>The contribution quotas for health insurance owed as of 1 January 2009 are established by GEO 226/2008 to a level which is below the ones of 2008, i.e.:</p> <ul style="list-style-type: none"><li>• 5.5% - the quota owed by the employee;</li><li>• 5.2% - the quota owed by the employer;</li><li>• 10.7% - the quota owed by persons who take optional insurance.</li></ul> <p>GEO 226/2008 also establishes the quotas for the social security contributions owed for 2009. The amount of the contributions borne by the employer is below the ones owed in 2008, i.e.:</p> <ul style="list-style-type: none"><li>• 28% for normal work conditions, of which 9.5% owed by employees and 18.5% owed by employers;</li><li>• 33% for abnormal work conditions, of which 9.5% owed by employees and 23.5% owed by employers;</li><li>• 38% for special work conditions, of which 9.5% owed by employees and 28.5% owed by employers.</li></ul> <p>The contribution quotas for unemployment insurance and the stimulation of employment established by GEO 226/2008 are:</p> <ul style="list-style-type: none"><li>• the contribution owed by employers to the unemployment insurance budget is of 0.5%;</li><li>• the individual contribution owed to the unemployment insurance budget is</li></ul>

of 0.5%;

- the contribution owed to the unemployment insurance budget by the persons insured based on the unemployment insurance contract is of 1%;
- the contribution owed by the employer to the Guarantee Fund for the Payment of Salary Debts is of 0.25%.

In the case of contributions to the unemployment insurance budget and the stimulation of employment, the amount of the contribution quotas is established at the level of the ones from December 2008.

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## Environmental Law

Name of the enactment

Government Emergency Ordinance No. 164/2008 for the amendment and supplementation of Government Emergency Ordinance No. 195/2005 on environmental protection ("GEO 164/2008")

Publication

Official Gazette of Romania, Part I, No. 808/03.12.2008

Entry into force

3 December 2008

Connections with other enactments

Government Emergency Ordinance No. 195/2005 on environmental protection ("GEO 195/2005")

Main provisions

GEO 164/2008 was issued further to several notifications from the European Commission, whereby the latter notified Romania on certain deficiencies in transposing Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

The most important amendments to GEO 195/2005 are:

- several definitions to the terms under Article 2 of GEO 195/2005 were amended; in most cases, the amendments were pertaining to the form, not the substance thereof;
- the titleholders of activities with a material impact on the environment, which are subject to certain procedures such as the sale of the majority shareholding, sale of assets, merger, spin-off, concession or any other procedures involving the change of the activity titleholder, are no longer under the obligation to obtain the environmental endorsement for establishing the obligations (as per the previous regulation); however, they

have the obligation to notify the authority competent for environmental protection in respect of the relevant procedures. The competent authority, as a result of the notification, will inform the titleholders of the permits concerning the environmental obligations which need to be undertaken, either based on the initial assessments (which preceded the issuance of the permit/integrated environmental permit) or, in absence, based on the environmental report;

- throughout the carrying out of the activity, the titleholders of the plans/programs/projects/activities have the obligation to notify to the competent authorities any new elements which have not been known upon the issuance of the regulations, as well as any changes in the conditions that lay at the basis of issuing the relevant documents, before the amendment;
- the environmental endorsement and the environmental approval remain valid throughout the implementation of the plan/program/project; mention should be made that the new enactment eliminated the provision according to which the environmental endorsement is no longer valid if the investment works for which it was issued did not start within 2 years from the issuance date;
- both the environmental permit and the integrated environmental permit are valid for 10 years (before this amendment, the environmental permit was valid for 5 years). Moreover, the environmental permit issued with a compliance program shall be valid throughout the performance of the program, but no longer than 60 days from the deadline for the performance of the last measure in the program. In respect of the environmental permits with a compliance program and the integrated environmental permits with a step plan (as well as the subsequent reviewed forms thereof) issued until the entry into force of GEO 164/2008, they remain valid until the last term provided in the compliance program or in the step plan;
- GEO 164/2008 brings amendments concerning the framework of suspending the environmental approval or the environmental permit for the nonobservance of the obligations provided by such documents. Thus, in case of suspension, the maximal limit of the term of grace granted by authorities for the fulfillment of the relevant obligations was extended from 30 to 60 days;
- in respect of the requests for issuing the regulations, submitted before the entry into force of GEO 164/2008, these shall be subject to the procedure in

Repealed enactments	<p>force as at their submission.</p> <p>Order No. 978/2003 of the Minister of Agriculture, Forests, Waters and Environment on the Regulation for the attestation of individuals and legal entities that draw up evaluation studies for the impact on the environment and environmental reports, which shall be repealed upon the entry into force of the order on approval of the secondary norms for the application of GEO 195/2005, as amended.</p> <p>Order No. 709/1999 of the Minister of Waters, Forests and Environmental Protection on the content of the environmental endorsement for privatization, issued by the competent authority.</p>
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## Media and Advertising

Name of the enactment	Government Emergency Ordinance No. 181/2008 for the amendment and completion of Audiovisual Law No. 504/2002 (“ <b>GEO 181/2008</b> ”)
Publication	Official Gazette of Romania, Part I, No. 809/03.12.2008
Entry into force	3 December 2008
Connections with other enactments	Audiovisual Law No. 504/2002, as further amended and supplemented (“ <b>Law 504/2002</b> ”)
Connections with the Community laws	Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (“ <b>Directive 2007/65/CE</b> ”)
Main provisions	<p>GEO 181/2008 transposes the Directive 2007/65/EC in the national legislation, creating the general framework for introducing radio and television broadcasting digital services, offered to the public, but not regulated previously by Law 504/2002.</p> <p>Also, GEO 181/2008 sets forth provisions aiming at a relaxation of the legislation applicable to the advertising, by admitting new procedures – product placement (the procedure “<i>product placement</i>” will be available to be used only in the case of programs produced after 19 December 2009), advertising on split screen, virtual advertising. These procedures will generate additional sources of revenues for television channels, with a benefic potential for the acquisition of quality</p>

programs.

GEO 181/2008 provides for the issuing, by a Government decision, within 12 months after the entry into force of GEO 181/2008, of the strategy for the transition from analog to digital broadcast and of the strategy for covering Romanian territory with programs, in accordance with the European laws and with the specific competences.

Also, GEO 181/2008 ensures the continuity of the offers to the public by ensuring the digital broadcast for all radio broadcasters that currently hold analog audiovisual licenses.

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## Public Procurement and Concessions

Name of the enactment

Government Emergency Ordinance No. 143/2008 for the amendment and supplementation of Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, of public works concession contracts and of service concession contracts ("GEO 143/2008")

Publication

Official Gazette of Romania, Part I, No. 805/02.12.2008

Entry into force

2 December 2008

Connections with other enactments

Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, of public works concession contracts and of service concession contracts, approved, with amendments and supplementations, by Law 337/2006, as further amended and supplemented ("GEO 34/2006").

Connections with the Community laws

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport

## Main provisions

and telecommunications sectors.

GEO 143/2008 sets forth amendments and supplementations to GEO 34/2006. Some of the most important are:

- **Application of GEO 34/2006 to contracts awarded by business entities which are not contracting authorities, but are financed/subsidized by contracting authorities:**

GEO 143/2008 amends certain provisions concerning the applicability of GEO 34/2006 to contracts awarded by a business entity which does not have the capacity of contracting authority.

Thus, GEO 34/2006 will apply to works contracts of a value over EUR 5,000,000 (instead of EUR 2,500,000, according to the previous regulation) and service contracts of a value over EUR 200,000 (instead of EUR 125,000, according to the previous regulation) awarded by a business entity which is not a contracting authority, but are directly financed/subsidized in a proportion of over 50% by a contracting authority.

For works contracts and service contracts of values below or equal to the ones mentioned above, as well as for supply agreements awarded by business entities which are not contracting authorities, regardless of their value, GEO 34/2006 cancels the obligation of the contracting authority which subsidizes the award of the relevant agreements to impose by financing contracts either the application of GEO 34/2006 or the application of a specific procedure established by the contracting authority based on internal regulations, in case a participation invitation is sent to at least 3 business entities.

- **Amendments to the carrying out of award procedures**

GEO 143/2008 eliminates the contracting authority's possibility to provide in the award documentation the bidders/candidates' right to submit two or more individual and/or joint candidacies/offers or to submit an individual/joint offer and to be nominated as subcontractors in another offer.

GEO 143/2008 also amends the provisions concerning the non-conclusion of the public procurement contract with the bidder declared winner to the effect that this situation may occur not only as a result of a force majeure event but also as a result of a fortuitous impossibility to implement the contract. In such cases, the contracting authority is entitled to declare winner the offer on the second place, if there is one and if it is admissible, otherwise the application of the award

procedure shall be cancelled, unlike the previous regulation, which established the contracting authorities' right of option between declaring winner the second-place offer and canceling the application of the award procedure.

- **The value thresholds which determine the obligation to publish participation notices and award notices in the Official Journal of the European Union**

In the case of procedures organized by the contracting authorities provided at Article 8 letters d) and e) of GEO 34/2006 (procedures organized for the award of sector contracts), GEO 143/2008 decreases the value threshold determining the obligation to publish participation notices and award notices in the Official Journal of the European Union. Therefore, the publication obligations are applicable to supply contracts or service contracts of over EUR 400,000 (instead of EUR 420,000, according to the previous regulation).

- **Settlement of appeals**

In respect of the provisions concerning the settlement of appeals, GEO 143/2008 introduces a distinction between appeals whose object consists in deeds of the contracting authority which were issued or took place before the deadline for opening the offers and appeals which had as object deeds which were issued or which took place after such date.

Thus, the appeals which have as object deeds of the contracting authority which were issued or took place before the opening of the offers may be filed no later than one business day before the date established for opening the offers. Consequently, the 5<sup>th</sup> and 10<sup>th</sup>, respectively, of the month of acknowledging the deed are deadlines to be applied to the appeals which had as object deeds of the contracting authority which were issued or took place after the deadline for opening the offers.

It is provided that the period for the suspension of the award procedure starts on the expiry of the deadline for the submission of the appeals, for deeds of the contracting authority which were issued or took place before the deadline for opening the offers, or upon the expiry of the 5-day or, respectively, 10-day term after the transmission of the communication concerning the result of applying the procedure, in the case of appeals which have as object deeds of the contracting authorities issued or concluded after the deadline for the opening of the offers. The period during which the award procedure is suspended expires upon the expiry of the deadline for filing the complaint against the decision of the National Council of Appeals Settlement concerning the settlement of the



appeals.

GEO 143/2008 reduces the term for the settlement of appeals from 30 days to 20 days (with the possibility of a 10-day extension in well-grounded cases) as of the receipt of the public procurement file. The non-observance of the term constitutes a breach of discipline, according to the amendments brought by GEO 143/2008.

In addition, GEO 143/2008 reduces the term for communication of the decision issued by the National Council for Appeals Settlement concerning the settlement of the appeals, from 5 days after the issuance to 3 days after the issuance.

GEO 143/2008 introduces the possibility of contracting authorities to take remedy measures after an appeal was filed, as well as the contesters' possibility to waive the appeal if it considers that the measures taken are sufficient for the remedy of the deeds considered illegal.

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## Real Estate

### 1. Amendments brought to the Housing Law

Name of the enactment

Government Emergency Ordinance No. 210/04.12.2008 for the supplementation of Housing Law No. 114/1996 ("GEO 210/2008")

Publication

Official Gazette of Romania, Part I, No. 835/11.12.2008

Entry into force

11 December 2008

Connections with other enactments

Housing Law No. 114/1996, republished in the Official Gazette of Romania, Part I, No. 393/31.12.1997, as further amended and supplemented ("Law 114/1996")

Main provisions

GEO 210/2008 was issued in order to allow the owners of new condominiums/residential complexes to be organized into owners associations in order to create the possibility to conclude utility contracts in the relevant residential complexes.

The amendments brought by GEO 210/2008 refer to the following main aspects:

- the introduction of concepts such as (i) "condominium" ("The real estate consisting in a land and one or more buildings built thereon, where some properties are joint properties and the rest are individual properties, for which a joint land book is drawn up as well as an individual land book for each exclusively owned individual unit, which may consist in dwellings and spaces with another purpose, as the case may be) and (ii) "individual unit"

("operational unit, component of a condominium, comprised of one or more dwelling rooms located on the same floor of the building or on different floors, with the necessary annexes, endowments and utilities, having direct access and separate entry, and which was built or transformed for the purpose of being used, as a rule, by a single household, in order to meet the dwelling requirements);

- dwelling buildings may be located, as the case may be, on lands belonging to individuals, legal entities, on lands belonging to the public or private field of the state and/or of administrative-territorial units, identified by a single cadastre number and land book number, in accordance with the law;
- the beneficiary/investor has to hold and prove a real right on the land meant for the location of the dwelling buildings, with the deeds of ownership and the land book extract for information;
- dwellings and individual units may be alienated and acquired based on notarized *inter vivos* legal deeds, under sanction of absolute nullity. The joint, forced and perpetual ownership right on the joint parts of a real estate may be sold only accompanied by the exclusive ownership right on the real estate or on a specific part thereof;
- the proof of the ownership right and of the other real rights on a dwelling unit shall be made only based on the deeds of ownership and on the land book extract for information;
- the owners of real estates in condominiums have the right to organize associations in accordance with the law;
- the defining of the overall built-up area as the sum of the areas of the horizontal sections of all the floors in the building, outlined as the outer line of the outer walls, including of the balcony and loggia walls.

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## **2. Amendments brought to the legislation concerning the authorization of the performance of building works**

Name of the enactment

Government Emergency Ordinance No. 214/2008 amending and supplementing Law No. 50/1991 on authorizing the performance of building works ("GEO 214/2008")

Publication

Official Gazette of Romania, Part I, No. 847/16.12.2008

Entry into force	14 February 2009
Connections with other enactments	Law No. 50/1991 on authorizing the performance of building works (“ <b>Law 50/1991</b> ”)
Main provisions	<p>GEO 214/2008 was issued for the purpose of harmonizing the specific legislation applicable to the authorization of building works by adaptation to the provisions of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.</p> <p>The amendments brought by GEO 214/2008 focus on the following main issues:</p> <ul style="list-style-type: none"><li>• extension of the category of persons who may request the issuance of a building permit, taking into consideration that, according to the new regulation, the building permit will be issued upon the request of the <i>“titleholder of a real right over the real estate – land and/or building”</i>, not only upon the request of the titleholder of the ownership right over the real estate;</li><li>• the express provision of the stages to be performed for the purpose of issuing the building permit, among which the obligation to have an initial assessment of the investment and the establishment of the need to evaluate its effects on the environment, the administrative deed issued by such authority being, as the case may be, the authority’s statement for environmental protection, the decision of the incorporation stage, the environmental endorsement, the Natura 2000 endorsement;</li><li>• throughout the new regulation, the terms: “project”, “project for the authorization of the performance of building works”, “project for the organization of the performance of the works” as well as “project for the authorization of the performance of the demolition works” are replaced by the concept of “Technical documentation – T.D.”;</li><li>• the technical documentation is the distinct technical-economic documentation establishing the main coordinates concerning the incorporation within approved urban indices, the location of the buildings and their relations with the vicinities, the operational schemes and fluxes, the</li></ul>

spatial structure, the resistance structure, the architecture expression, the endowment of the buildings with equipments and installations – including the solutions for insurance, branching and connection thereof to the urban infrastructure;

- the definition of the urban planning certificate is amended so as to include the obligation to contact the competent environmental safety authority, in respect of the initial evaluation of the investment and the establishment of the need to evaluate its effects on the environment for the purpose of obtaining the administrative deed of the competent environmental protection authority;
- the drawing up of the technical documentation – T.D. shall take into account the specific measures for environmental protection established by the administrative deed of the competent environmental protection authority and such measures can only be amended through the procedure of authorization or through the building permit;
- the public is entitled to take actual participation in the procedure of authorizing the performance of the building works, having the right to transmit comments and opinions to the local public administration authorities, before the latter takes a decision;
- any interested person who considers that any of his/her rights or legitimate interest is damaged, may address the court of administrative claims, but only if he/she has previously asked the issuer to revoke the deed.

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## State Aid

Name of the enactment

Government Emergency Ordinance No. 206/2008 concerning the financial support measures granted by the Authority for State Assets Recovery to business entities in its portfolio, for the purpose of overcoming the effects of the world financial economic crisis (“**GEO 206/2008**”)

Publication

Official Gazette of Romania, Part I, No. 831/10 December 2008

Entry into force

10 December 2008

Main provisions

The purpose of GEO 206/2008 is to establish support measures in favor of business entities in the portfolio of the Authority for State Assets Recovery (“**AVAS**”) with a view to fight the negative effects of the world economic crisis.

In this context, AVAS has the possibility to grant two categories of financial support to the business entities in its portfolio, as follows:

- a reversible financial support, as loans with an interest rate at least comparable to the ones granted for the loans to healthy companies and, especially, to the reference rate adopted by the European Commission, generically referred to as “*salvage aid*”;
- a restructuring aid, for own debts and fiscal/commercial/bank debts taken over for recovery, payment incentives, consisting in breakdowns for a period of maximum 5 years, with an interest rate at least comparable to the one granted for loans to healthy companies and, in particular, to the reference rate adopted by the European Commission.

Such support measures shall be granted as state aid schemes or individual state aids, in observance of the applicable national and Community legislation, after the European Commission passes a decision in which the support measures are compatible to the common market.

In addition, for the purpose of avoiding obstacles in the potential privatization processes, the ordinance provides that the granting of such aids shall not be affected by the changes in the beneficiaries’ shareholding.

In respect of the actual implementation of this ordinance it is very interesting to point out that Government Emergency Ordinance No. 101/2006 on the reorganization of AVAS by absorbing the Office of State Participation and Privatization in Industry was rejected by the Romanian Parliament in December 2008. This issue will generate numerous discussions in respect of the eligibility of certain business entities to benefit from the abovementioned support measures.

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## Taxation

Name of the enactment

Government Emergency Ordinance No. 200/2008 for the amendment and supplementation of Fiscal Code Law No. 571/2003 (“**GEO 571/2003**”)

Publication

Official Gazette of Romania, Part I, No. 815/04.12.2008

Entry into force

15 December 2008 and 1 January 2009, respectively

Connections with other enactments

Fiscal Code Law No. 571/2003

## Main provisions

GEO 571/2003 brings several material amendments to the Fiscal Code, in particular, in the area of the profit tax and the VAT.

A first amendment refers to the introduction of a new reduced VAT quota of 5%, which will be applied to the delivery of dwellings as part of the social policy, including the land on which they are built. GEO 571/2003 defines in detail the meaning of the dwelling as part of the social policy. This amendment will enter into force on 15 December 2008, unlike the other amendments.

Another amendment is the introduction of the following fiscal incentives:

- additional deduction in calculating the taxable profit amounting to 20% of the expenses eligible for research-development activities; the additional deduction is calculated quarterly / annually. If a fiscal loss is reported, it is recovered from the taxable profits obtained within the following consecutive 5 years;
- the application of the accelerated amortization method in the case of the apparatus and equipments for research-development activities as well.

Such fiscal incentives for research-development are granted in the context of the issuance by the Ministry of Education, Research and Youth, subject to approval by the Ministry of Economy and Finance, of a state aid scheme for research-development and innovation under the applicable legal regulations.

Another major amendment brought to the Fiscal Code, in the context of an international financial crisis, is to declare as non-taxable the following types of revenues:

- the revenues realized by individuals as interests for term deposits and / or the savings instruments;
- the revenues representing the interest to term deposits and / or savings instruments, realized in Romania by individuals residing in other states than those of the European Union.

The dividends reinvested, starting from 2009, for the purpose of keeping and generating new jobs in developing the activity of Romanian legal entities distributors of dividends, according to the scope of business thereof, as registered with the National Office of Trade Registry, are tax free. Also, the tax exemption applies to the dividends invested in the share capital of another Romanian legal entity, for the purpose of generating new jobs, for the development of its activity, in accordance with the scope of business registered with the National

Office of Trade Registry. The procedure of applying this tax exemption for dividends shall be subsequently approved by an order.

Repealed enactments

As of 1 January 2009, the provision concerning the tax exemption of the revenues from independent activities obtained through the actual application in the country by the titleholder or, as the case may be, by its license holders of an invention patented in Romania, including the manufacture of the product or, as the case may be, the application of the procedure, within the first 5 years from the first application, calculated from the starting date of the application and included in the validity term of the patent, is repealed.

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