

Legal Bulletin

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Banking Law

Name of the enactment	Regulation No. 2/2009 for the amendment of Regulation No. 3/2007 of the National Bank of Romania on the limitation of loan risk for loans to individuals (“Regulation 2/2009”)
Publication	Official Gazette of Romania, Part I, No. 40/22.01.2009
Entry into force	22 January 2009
Connections with other enactments	Regulation No. 3/2007 on the limitation of loan risk for loans to individuals
Main provisions	<p>The relevant amendments provided by Regulation No. 2/2009 are:</p> <ul style="list-style-type: none">• Before the amendment, the lenders would establish, as part of their internal regulations, at least the manner of organizing the activity of granting and executing loans to individuals and, as the case may be, the guarantees conditions for each type of loan. Pursuant to the new regulation, lenders are under an obligation to provide, in their internal regulations, inclusively the maximal limit admitted for the value of the financing as per the value of the mortgaged real estate;• Moreover, in respect of internal regulations, Regulation 2/2009 provides that lenders shall also have to establish the maximal levels admitted for the overall indebtedness degree, inclusively for their grounding, distinguished as per categories of clients, the destination of the loan (e.g., consumer credit, mortgage loan), the type of the loan (broken down as per the relevant currency or, as the case may be, indexation, the type of interest, <i>i.e.</i> fixed or variable, the loan period and the conduct of the client in respect of the fulfillment of the debt servicing determined by the quality of the guarantee), and in the case of loans that are not guaranteed by mortgages on residential real estates or <i>intra muros</i> lands, the maximal levels admitted for the overall indebtedness degree are established inclusively by taking into consideration the foreign exchange risk, the interest rate risk, as well as the possibility of a loan cost increase resulting from commissions and other expenses concerning the management of the loan provided in the agreement;

- Finally, lenders have the obligation to send to the National Bank of Romania – the Supervision Department, for validation purposes, their internal regulations, amended in accordance with the provisions of Regulation No. 2/2009.

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Capital Markets

Name of the enactment

Norm on determining, withholding and disbursing the tax on individuals' capital gain from the transfer of securities (the "**Norm**"), approved by Order No. 144/2008 of the National Securities Commission ("**NSC**") and by Order No. 3483/2008 of the Ministry of Economy and Finance

Publication

Official Gazette of Romania, Part I, No. 24/12.01.2009

Entry into force

12 January 2009

Connections with other enactments

- Fiscal Code Law No. 571/2003, as further amended and supplemented (the "**Fiscal Code**");
- Capital Market Law No. 297/2004, as further amended and supplemented.

Main provisions

The norm reiterates many of the relevant provisions contained in the former regulation (i.e. NSC instruction No. 12/2005 on determining, withholding and disbursing the tax on individuals' capital gain from the transfer of securities). However, the Norm also contains a number of new provisions, which either further regulate specific aspects concerning the determining, withholding and disbursement of the tax on capital gain, or amend certain mechanisms established by the previous enactment. Among the most important aspects that are different from the previous enactment, the following are of note:

- It expressly establishes the method for determining the purchase price of securities for several purchase hypotheses not covered by the former enactment; in this respect, the Norm regulates, *inter alia*, the manner of determining the purchase price for securities acquired by employees as a result of their repurchase from the market by the company (in which case the purchase price shall be the one registered in the subscription form), for the securities resulting from the dissolution of the Employees Shares Program (ESP) (the purchase price is the price registered in the ownership transfer deed or, in the absence thereof,

the nominal value as of the issuance of the statement of account);

- It establishes the obligation of a tax payer holding securities evidenced in the accounts opened exclusively with the Central Depository to give an affidavit (as per a framework provided at Appendix No. 1 to the Norm) concerning the origin, the time of purchase, the amount and the purchase price of said securities;
- It regulates new specific obligations of intermediaries in the context of determining the annual net profit for the purpose of the final taxation; such intermediaries have to submit to the competent fiscal body a statement concerning the calculation and withholding of the tax for each revenue beneficiary, until the last day of February, inclusively, of the current year, for the previous year; moreover, the intermediary / the investment management company (as the case may be) has the obligation to issue to the tax payer or to the fiscal representative thereof, until the 28 February of the year following the one for which the calculation is made, a portfolio sheet as supporting document, which will highlight the annual profit / the annual loss reported by the client for the part of securities/shares evidenced in its account, as well as the amount of the tax calculated and withheld during the fiscal year by the intermediary / investment management companies.

As with the former regulation, the annual net profit shall be determined distinctly, as per the differentiated taxation quotas. Thus, the calculation of the net profit taxed by 1% or, as the case may be, the loss generated by the transfer of the securities, shall take into consideration the entire profit/loss from the transfer of the securities operated after 1 January 2007, if said securities were held in portfolio for more than 365 days. On the contrary, the calculation of the net profit taxed by 16% or, as the case may be, of the loss generated by the transfer of the securities, shall take into consideration the entire profit/loss from the transfer of the securities alienated after 1 January 2007, if such were held in portfolio for less than 365 days, inclusively. However, although the Norm does not provide so expressly, the net profit mentioned above shall not include the profit resulting from the transfers operated during the 1 January 2009 – 31 December 2009 period which is tax-free according to the current provisions of the Fiscal Code.

Repealed enactments

NSC Instruction No. 12/2005 on determining, withholding and disbursing the tax on individuals' capital gain from the transfer of securities, approved by NSC Order No. 80/2005, published in the Official Gazette of Romania, Part I, No. 94/01.02.2006, as further amended and supplemented.

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Infrastructure

Name of the enactment

Government Emergency Ordinance No. 228/2008 for the amendment and supplementation of several enactments ("GEO 228/2008")

Publication

Official Gazette of Romania, Part I, No. 3/05.01.2009

Entry into force

5 January 2009

Connection with other enactments

- Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, public works concession agreements and services concession agreements, approved with amendments and supplementations by Law 337/2006, as further amended and supplemented ("GEO 34/2006");
- Administrative Litigations Law No. 554/2004, as further amended and supplemented ("Law 554/2004");
- Law No. 50/1991 on authorizing the execution of building works, republished, as further amended and supplemented ("Law 50/1991");
- Government Emergency Ordinance No. 214/2008 for the amendment and supplementation of Law No. 50/1991 on authorizing the execution of building works ("GEO 214/2008").

Main provisions

The main objective for the issuance of GEO 228/2008 was to speed up the execution of certain categories of works of material importance in the infrastructure field.

For this purpose, GEO 228/2008 brought amendments to several relevant enactments in this field, which amendments refer to the following main elements:

- **Amendments to GEO 34/2006**

GEO 228/2008 amends the provisions of GEO 34/2006 as concerns the settlement of contestations regarding awarding procedures.

For the settlement of contestations regarding the awarding procedures for works

related to the national transport infrastructure (so, in respect of the awarding of works procurement agreements as well as the awarding of public works concession agreements for the national transport infrastructure), this enactment cancels the competence of the National Council for the Settlement of Contestations.

In exchange, it introduces a special procedure for the settlement of such contestations by Bucharest Court of Appeal. The contestations are settled on an emergency and priority basis, pursuant to Law 554/2004, and the legal provisions also establish some short terms as concerns the carrying out of the trial, the pronouncement and the communication of the decision.

The cancellation of the competence of the National Council for Settlement of Contestations in respect of the settlement of contestations concerning the procedures of awarding public procurement agreements or concession agreements for works related to the national transport infrastructure consequently leads to the cancellation of the suspending effect of introducing the contestation on the awarding procedure, regulated as a general rule by GEO 34/2006.

- **Amendments to Law 50/1991 and GEO 214/2008**

The amendments brought to Law 50/1991 consist in establishing a special competence for authorizing the execution of building works related to the national road transport infrastructure. Therefore, the execution of the works in this category is authorized by the Ministry of Transports and Infrastructure.

GEO 228/2008 repeals the special provisions of GEO 214/2008 concerning the payment by investors or owners of a monthly contribution to the State Inspectorate in Buildings amounting to 0.3% of the expenses for the execution of the works, in the case of building works related to the national road transport infrastructure. As a result, it applies the exemption provided at Article 3 para. (10) of Law 198/2004 for the works having as object the projects included in the program of the Ministry of Transports and Infrastructure concerning the development of national roads.

- **Amendments to Law 198/2004**

The amendments brought by GEO 228/2008 refer to the following main aspects:

- It provides for making public, by posting at the headquarters of the local council and on the website of the expropriator, the location of the work,

communicating it to the National Agency of Cadastre and Real Estate Publicity for the purpose of recording the intention to expropriate the real estates located on the expropriation corridor, setting landmarks for all the coordinates that define the location and including such coordinates by the local administration authorities in the general urban plans of towns/cities/villages;

- It provides that the drawing up of the evaluation report for the real estates subject to expropriation should take into account the expertise reports on the trading value of the real estates, updated by the notary public offices;
- It eliminates the provision establishing that, as part of the action against the decision of establishing the amount of the indemnity, upon the calculation of the indemnities the experts and the court shall take into account the time of the ownership transfer;
- It introduces a new provision according to which the expropriation procedure cannot be suspended or terminated due to the existence of litigations concerning the possession or ownership over the expropriated real estate;
- It establishes the competence of the courts of ordinary law for the settlement of requests to establish the right to indemnification and the amount thereof.

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Personal Data Protection

Name of the enactment

Decision No. 101/2008 of the National Authority for the Supervision of Personal Data Processing (“**Decision 101/2008**”)

Publication

Official Gazette of Romania, Part I, No. 34/19.01.2009

Entry into force

1 February 2009

Connections with other enactments

Law No. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, as further amended and completed

Connections with the community law

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Main provisions

Decision 101/2008 was issued by the National Authority for the Supervision of Personal Data Processing (“**ANSPDCP**”) in consideration of the need to clarify certain procedural issues concerning the authorization of health-related personal

data processing, where the relevant person did not give his/her written, non-equivocal consent to the processing of this category of personal data.

Therefore, in accordance with Decision 101/2008, the processing of health-related personal data, under the conditions specified above, may be performed by an operator only after obtaining the authorization to this effect issued by ANSPDCP. Decision 101/2008 also establishes the framework of the authorization issued in this situation.

Decision 101/2008 establishes the rule that, for the issuance of the above-mentioned authorization, ANSPDCP shall request the consultative endorsement of the Romanian College of the Medical Profession. Also, it establishes an exception from this rule, in the sense that the consultative endorsement of the Romanian College of the Medical Profession may not be requested by ANSPDCP in case there are emergency reasons justified by the operator. Decision 101/2008 does not explicitly specify the reasons that justify the granting of the authorization without requesting the abovementioned consultative endorsement and consequently how to assess the grounded or ungrounded nature of the emergency cases invoked by the operator are established by ANSPDCP.

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