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Legal Bulletin

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Corporate

Name of the enactment	Government Emergency Ordinance No. 109/2011 on corporate governance of public undertakings ("**GEO No. 109/2011**")
Publication	Official Gazette of Romania, Part I, No. 883 of 14 December 2011
Entry into force	14 December 2011
Connections with other enactments	Companies Law No. 31/1990 ("**Companies Law**"), deemed as general law in the matters expressly stipulated by GEO No. 109/2011
Main provisions	Adopting GEO No. 109/2011 is justified by the lawmaker through the necessity of ensuring comprehensive and efficient norms to govern the operation of public undertakings for the purpose of improving their performances and competiveness. Among the basic principles promoted by the new regulation, there are also the principles of transparency and objectiveness in selecting the members of the management bodies of public undertakings, and transparency of their activity in relation to the public. GEO No. 109/2011 applies to public undertakings (except for the financial and banking, insurance and reinsurance companies and companies performing activities of national interest in the field of defense, public order and national safety) defined as follows: • Regies autonomes; • National companies or other companies in which the State or any of its administrative and territorial units acts as sole or majority shareholder, or holds control; • Companies in which the aforementioned undertakings hold a majority interest or an interest ensuring control. The concept of "control" is defined under the new regulation as directly/indirectly holding the majority of the voting rights, holding control on the appointment/revocation of the management bodies or exercising, as shareholder, a decisive influence on the management strategy of the undertaking. An essential part in the governing of public undertakings is played by the public supervisory body, namely the institution which:

- Coordinates the *regie autonome* or to which the latter is subordinated;
- Acts as shareholder in the national companies or in the ones in which the State or any of its administrative and territorial units is a sole or majority shareholder, or holds control;
- Coordinates the activity of public undertakings which act as shareholders in a controlled company.

The duties of the supervisory body are listed in the preambles of the regulation and developed therein. In general, the supervisory body plays a major part in appointing the management bodies within public undertakings, and in supervising their activity, as well as monitoring the observance of transparency in the decision-making process concerning issues related to the activity of public undertakings. Nevertheless, the supervisory body cannot interfere with the actual administration and management of the public undertaking, as the management bodies hold exclusive competence to make such decisions.

GEO No. 109/2011 contains different regulations according to the type of public undertaking in question, i.e. *regies autonomes* and other companies.

As regards the administration and management of *regies autonomes*, such activities are performed by a board of directors made up of 5 up to 7 individuals of whom one is mandatorily a representative of the Ministry of Public Finance and one is representative of the supervisory body. All members of the board of directors shall be appointed further to a preliminary selection carried out by a HR recruiting expert committee, which may be assisted by an independent expert. The notice regarding the selection of the members of the board of directors and the list of selected members shall be made public.

The members of the board of directors and the supervisory body shall conclude a mandate agreement which shall include express provisions on the performance indicators that must be achieved. After having been appointed in office, the board of directors shall draft and submit to the supervisory body a management plan that shall be subject to the latter's approval. Unless such plan is finally approved by the supervisory body, the board of directors shall be replaced.

The incompatibility situations and the conflicts of interest the members of the board of directors may find themselves in are expressly regulated, and there are express provisions concerning their remuneration and how to initiate liability proceedings against them. Such provisions are mostly similar to those contained

by the Companies Law.

The supervisory body may decide to delegate the executive management of the *regie autonome* to one or several managers who shall be appointed by the board of directors optionally assisted by an independent expert. Unlike the provisions of the Company Law, the chairman of the board of directors cannot also act as a general manager of the *regie autonome*. After appointment, the managers shall prepare a management plan in which to describe the management strategy of the public undertaking for the following year, which plan shall be in accordance with the administration plan already submitted by the board of directors.

As for the other public undertakings, which are not *regies autonomes*, their organization and operation is governed by the special provisions of the new regulation and the Companies Law, such being deemed as general law. Traded public undertakings are in subsidiary subject to the capital market laws, as well.

The companies deemed public undertakings are managed according to the one-tier or two-tier system. GEO No. 109/2011 contains detailed provisions on the method of selecting the candidates who shall be members of the board of directors, and of the supervisory board, respectively.

In general, directors are appointed by the general meeting of the shareholders after the candidates have been selected by a nomination committee within the board of directors, which committee may be assisted by an independent HR recruiting expert. The participation of such independent expert is mandatory for the public undertakings having registered a turnover exceeding EUR 7,300,000 and with no less than 50 employees. After appointment, the board of directors or the supervisory board shall submit a management plan to the general meeting of the shareholders, for approval. Similarly, unless the administration plan is finally approved, the selected directors shall be replaced. GEO No. 109/2011 also contains provisions on the manner of selecting the members of the board of directors or of the supervisory board by the method of cumulative voting.

Within the board of directors or the supervisory board, a nomination and remuneration committee and an audit committee shall be organized on a mandatory basis. The management of a company may be delegated to one or several managers appointed by the board of directors which may be assisted by an independent expert. After appointment, they shall submit a management plan subject to the approval of the board. The manner of remunerating the managers is provided under the new regulation and shall be published on the

website of the public undertaking in question.

GEO No. 109/2011 contains special provisions on protection of minority shareholders of public undertakings by ensuring their access to documents and information relevant for the activity of the undertaking on the website thereof. Also, it is provided that the minority shareholders may vote electronically or by mail.

Public undertakings are subject to statutory audit, and they shall submit their annual financial statements to the territorial units of the Ministry of Public Finance.

Regarding the transparency of the decision-making process, the board of directors and the supervisory boards are bound to inform the shareholders of specific transactions concluded by the public undertaking, such as those concluded with other public undertakings or with the supervisory body which exceed a specific ceiling. In addition, a series of reporting obligations are regulated as being incumbent on the board of directors and the supervisory board, the nomination and remuneration committee, the public supervisory body, the Ministry of Public Finance and the Ministry of Administration and Interior. The content of such reports shall be published, as well.

Finally, GEO No. 109/2011 contains certain transitory provisions on the manner of appointing the members of management bodies in public undertakings in which the State is a sole or majority shareholder, with a turnover exceeding RON 1,000,000 in 2010 and in excess of 1,000 employees. The list of such undertakings shall be established by means of an order of the leader of the supervisory body.

Repealed enactments

Repeals Article 7 and Articles 12-14 of Law No. 15/1990 on reorganization of State-owned economic units as *regies autonomes* and business companies.

Repeals Article 2 of Government Emergency Ordinance No. 79/2008 on economic and financial measures at the level of certain economic operators.

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Electronic Communications

Name of enactment

Government Emergency Ordinance No. 111/2011 on electronic communications ("**GEO No. 111/2011**")

Publication

Official Gazette of Romania, Part I, No. 925 of 27 December 2011

Entry into force

27 December 2011

	25 February 2012, with regard to certain provisions on the relationships between the electronic communication services providers and end users
Connections with other enactments	Government Emergency Ordinance No. 79/2002 on general regulatory framework for communications, approved as amended and supplemented by Law No. 591/2002, as amended and supplemented ("**GEO No. 79/2002**");
	Government Emergency Ordinance No. 22/2009 establishing the National Authority for Management and Regulation in Communications ("**NAMRC**"), approved by Law No. 113/2010, as subsequently amended;
	Government Ordinance No. 130/2000 on consumer protection when entering and executing long distance contracts, republished, as subsequently amended.
Connections with EU legislation	• Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of electronic communication networks and associated facilities;
	• Directive 2002/20/EC of the European Parliament and of the Council on the authorization of electronic communication networks and services;
	• Directive 2002/21/EC of the European Parliament and of the Council on common regulatory framework for electronic communication networks and services;
	• Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communication networks and services;
	• Directive 2009/136/EC of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communication networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ("**Directive 2009/136/EC**");
	• Directive 2009/140/EC of the European Parliament and of the Council amending Directive 2002/21/EC on the common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on the access to, and interconnection of the electronic communication networks and associated facilities and Directive

2002/20/EC on the authorization of electronic communication networks and services ("**Directive 2009/140/EC**");

- Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts.

Main provisions

General aspects

GEO No. 111/2011 transposed in the national legislation Directives 2009/136/EC and 2009/140/EC amending the regulatory framework for the electronic communications within the European Union. Also, GEO No. 111/2011 reunited in a single enactment all the legal provisions on electronic communications that were previously contained by several enactments, except for those regarding the right of access to properties, which are still regulated by GEO No. 79/2002.

Among the significant amendments brought by GEO No. 111/2011 to the regulatory framework in the field of electronic communications, there are also those concerning the following issues:

Legal framework governing radio frequencies

- In the field of radio frequencies, the provisions of GEO No. 111/2011 establish that the National Table of Frequency Allocations ("**NTFA**") is approved by Government decision, upon NAMRC's proposal, unlike the previous regulation which provided that the NTFA is approved by NAMRC.
- GEO No. 111/2011 contains provisions on the principles of technological neutrality and service neutrality regarding the use of radio frequency bands, in the sense that they can be used by means of any technology available for each type of application established under the NTFA and for the provision of any electronic communication service established under the NTFA. Also, the provisions of GEO No. 111/2011 set out the conditions in which NAMRC may establish exemptions from these principles.
- The provisions of Article 26 (5) of GEO No. 111/2011 allow for direct allocation by NAMRC of radio frequencies, subject to the approval of the National Audiovisual Council, to public radio and television broadcasters, if such measure is required for achieving objectives of general interest.
- Article 26 (6) of GEO No. 111/2011 expressly provides that NAMRC may

annul a competitive or comparative selection procedure for the award of licenses for the use of radio frequencies, prior to the deadline for the submission of the bids, as well as the conditions in which such annulment may operate.

Contracts between electronic communication service providers and end users

- Article 50 (1) of GEO No. 111/2011 provides for a maximum initial contractual period of 24 months for the contracts concluded between the electronic communication service providers and consumers. Also, consumers are offered the possibility to conclude contracts for a maximum duration of 12 months.
- GEO No. 111/2011 eliminates the competence of the National Authority for Consumer Protection and brings in the competence of NAMRC in aspects relating to consumer protection in the distance contracts of the electronic communication sector, which were previously regulated by the provisions of Government Ordinance No. 130/2000.
- For the conclusion of contracts involving the service of porting of numbers, the ported number shall be activated in the target network within no more than one business day, and the loss of service during the process of porting shall not exceed this term.

Notifying NAMRC in case of agreements in the field of electronic communications

- GEO No. 111/2011 provides, apart from any potential obligations applicable under the general competition law, for the obligation to notify NAMRC in advance if a universal service provider intends to transfer the entirety/a substantial part of the assets related to the access network to another entity controlled, directly or indirectly, by a different owner. In this case, NAMRC may take specific measures imposing, amending or withdrawing certain obligations to ensure compliance with the obligations concerning universal service.
- Also, NAMRC shall be notified in advance (i) if a vertically integrated operator identified as having significant power in a wholesale market intends to transfer the entirety/a substantial part of the assets related to the access network to another entity controlled, directly or indirectly, by a different owner or (ii) if it intends to set up a separate

economic entity which shall provide equivalent access services to other suppliers operating in the retail sale market, including to its own retail business. NAMRC shall evaluate the planned measures within no more than 12 months following the notification thereof and may impose, amend or withdraw obligations in the relevant markets associated to the access network. Also, NAMRC may request amendment of the planned measures.

***Ex-ante* specific obligations imposed by NAMRC**

- GEO No. 111/2011 provides for the possibility to impose the obligation of functional separation on the vertically integrated operators identified as having significant power in the wholesale markets. The obligation of functional separation may be imposed by NAMRC only in exceptional situations, when the other specific obligations imposed by NAMRC are not sufficient to ensure an effective competition, and competition problems persist.
- As for the time interval in which NAMRC performs the market analyses underlying its regulatory measures, GEO No. 111/2011 provides for a period of (i) 3 years following the date when the measures have been adopted based on a prior analysis in the relevant market, which may be extended by an interval of up to 3 years, subject to the approval of the European Commission, or of (ii) 2 years following the date when a new recommendation has been adopted by the European Commission, for markets which have not been previously notified to the Commission.

Repealed enactments

- Government Ordinance No. 34/2002 on access to, and interconnection of, electronic communications networks and associated facilities, approved as amended and supplemented by Law No. 527/2002;
- Law No. 304/2003 on Universal Service and users' rights relating to electronic communications networks and services;
- Government Decision No. 1208/2007 on the general conditions regarding the interoperability of the interactive digital television services as well as of the consumers' digital television equipment;
- Government Decision No. 810/2009 regarding the conditions related to the systems with conditional access to the services of broadcasting in digital format radio and television programs.

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Employment and Social Security Law

1. The basic gross minimum salary for the year 2012

Name of enactment	Government Decision No. 1225/2011 setting the basic gross minimum salary guaranteed to be paid ("**GD No. 1225/2011**")
Publication	Official Gazette of Romania, Part I, No. 922 of 27 December 2011
Entry into force	27 December 2011
Main provisions	GD No. 1225/2011 sets the basic gross minimum salary guaranteed to be paid at RON 700 per month, for an average full-time job of 169.333 hours per month in 2012, starting as of 1 January 2012. Within the year 2011, the basic gross minimum salary guaranteed to be paid was 670 per month.
Repealed enactments	Government Decision No. 1193/2010 setting the basic gross minimum salary guaranteed to be paid
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2. Business sectors where collective bargaining agreements may be negotiated and concluded

Name of enactment	Government Decision No. 1260/2011 on business sectors established according to Law No. 62/2011 ("**GD No. 1260/2011**")
Publication	Official Gazette of Romania, Part I, No. 933 of 29 December 2011
Entry into force	29 December 2011
Connections to other enactments	Law No. 62/2011 on social dialogue ("**Law No. 62/2011**")
Main provisions	GD No. 1260/2011 establishes the business sectors where collective bargaining agreements may be negotiated and concluded, according to the provisions of Law No. 62/2011. Thus, a number of 29 business sectors were established. The main scope of business registered with the trade registry is the criterion of affiliation with one of the business sectors established under the new enactment. To this end, should certain activities be found in several business sectors, employers shall explicitly state the business sector chosen for negotiation in the mandate granted to the representatives in charge of negotiating the collective employment agreement.
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3. Financial measures in the budgetary field

Name of enactment	Law No. 283/2011 approving Government Emergency Ordinance No. 80/2010 supplementing Article 11 of Government Emergency Ordinance No. 37/2008 regulating certain financial measures in the budgetary field ("Law No. 283/2011")
Publication	Official Gazette of Romania, Part I, No. 887 of 14 December 2011
Entry into force	17 December 2011
Connections with other enactments	The provisions of Law No. 283/2011 are connected to a series of legal enactments establishing financial measures in the budgetary field.
Main provisions	Law No. 283/2011 regulates a set of financial measures in the budgetary field, applicable in 2012. The main issues contemplated by Law No. 283/2011 include: • The gross amount of the basic salaries/pays for the basic positions/pays for the basic positions/employment allowances of the staff paid from public funds, and, inasmuch as the staff performs activity under the same conditions, the amount of the increments, allowances, compensations and other elements of the remuneration system which, according to law, is part of those mentioned above, are to be maintained at the same level as that granted to the staff paid from public funds in December 2011. • Overtime performed by the budgetary staff shall be compensated by time-off, only. • Public authorities and institutions, irrespective of the financing method, shall grant no holiday gifts or bonuses. • Central and local public institutions and authorities identified by referring to Law No. 500/2002 on public finances, as further amended, and to Law No. 273/2006 on local public finances, as further amended, except for the institutions fully financed by own income, shall not grant any food vouchers to their staff. No amounts are provided in central and local public institutions' 2012 budgets for granting gift and holiday vouchers to their staff. The entry into force of certain provisions of Law No. 263/2010 on the annual increase of the pension point and certain pension scores is postponed until 1 January 2013.
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4. Framework law on social work

Name of enactment	Law No. 292/2011 on social work ("**Law No. 292/2011**")
Publication	Official Gazette of Romania, Part I, No. 905 of 20 December 2011
Entry into force	23 December 2011
Connections with other enactments	• Law No. 76/2002 on the system of unemployment insurance and stimulation of employment; • Government Emergency Ordinance No. 124/2011 amending and supplementing certain enactments regulating the granting of social work benefits.
Main provisions	Starting with its effective date, Law No. 292/2011 shall represent the framework regulation in matters of social work. The new regulation is the legislative authority's intention to reform and renew the national social work system ("**NSWS**") which, according to the reforming law, is made of two large components: *(i)* the system of social work benefits and *(ii)* the system of social services.

System of social work benefits

First, Law No. 292/2011 defines the social work benefits and then creates a classification, as per the following criteria:

- Eligibility requirements: *(i)* selective social work benefits, *(ii)* universal social work benefits, and *(iii)* category social work benefits;
- Purpose: *(i)* social work benefits aimed at preventing and fighting against poverty and the risk of social exclusion (*e.g.* social aids supported by the State budget, selectively granted to the population categories in poverty risk; emergency aids supported by the State budget and/or the local budgets, granted for situations caused by natural disasters, fires, etc.), *(ii)* social assistance benefits for the support of the child and family (*e.g.* child allowances, indemnities for raising children), *(iii)* social work benefits in support of the people with special needs (*e.g.* allowances for persons with disabilities, attendance indemnities), *(iv)* social work benefits for special situations.

In addition to the aforementioned provisions, the regulation of this first component of **NSWS**, includes the following relevant provisions:

- Reporting social work benefits to the Reference Social Indicator (RSI)

by applying a social insertion index (SII) starting from the effective date of Law No. 292/2011;

- Providing a sole form for requesting social work benefits financed by the State budget, which form is to be established by Government decision, within 120 days as of the entry into force of Law No. 292/2011;
- Making the granting of social work benefits conditional upon the payment by the entitled person of the local taxes and duties to the local budget;
- Granting tax or other facilities to employers that hire persons who are being granted social work benefits;
- Creating a threshold for the cumulated social work benefits which a person or family may be provided with.

System of social services

In regulating this system, as in the case of the social work benefits, Law No. 292/2011 first defines the social services and classifies them as per the following criteria:

- Purpose of the service (*e.g.* personal care services, recovery/rehabilitation services);
- Categories of social service beneficiaries (*e.g.* social services intended for the child and/or family, persons with disabilities);
- Assistance regime, *i.e.* residential or non-residential;
- Location (*e.g.* social services provided at the beneficiary's domicile, in day care centres);
- Legal regime of the provider (social services organized as public or private structures);
- Regime of granting (social services provided in normal regime and in special regime).

Beneficiaries of social services are the persons and families in difficulty. Social service providers may be individuals or legal entities, of public law (*e.g.* authorities of the central public administration, sanitary units, educational institutions) or of private law (*e.g.* associations, foundations, authorized individuals).

Finally, as to the both components of NSWS, Law No. 292/2011 also includes

provisions on the management of the social work benefits and social services and the process of granting the same.

With a view to implementing the new general framework in matters of social work, the Ministry of Labor, Family and Social Protection shall take the necessary measures so that Law No. 292/2012 be followed by the amendment and supplementation of approx. 15 existing enactments, and preparation of new enactments, as well.

Repealed enactments

- Law No. 47/2006 on the national social work system.
- Government Emergency Ordinance No. 118/1999 on the establishment and use of the National Solidarity Fund, approved with amendments by Law No. 366/2001.

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5. New Provisions on Social Security Benefits Granting

Name of enactment

Government Emergency Ordinance No. 124/2011 amending and supplementing certain enactments regulating the granting of social security benefits ("GEO No. 124/2011")

Publication

Official Gazette of Romania, Part I, No. 938 of 30 December 2011

Entry into force

30 December 2011

Connections with other enactments

The provisions of GEO No. 124/2011 are connected to a series of legal enactments within the social security field, out of which we mention the following:

- Social Security Law No. 292/2011 ("Law No. 292/2011");
- Government Emergency Ordinance No. 148/2005 on supporting the family in raising the child, approved as amended and supplemented by Law No. 7/2007, as further amended ("GEO No. 148/2005");
- Government Emergency Ordinance No. 111/2010 on the leave and monthly indemnity granted for child raising, approved as amended by Law No. 132/2011 ("GEO No. 111/2010").

Main provisions

Law No. 292/2011 provides that, starting from 2012, the levels, and amounts of the social security benefits, respectively, are to be established by reference to the social reference indicator (SRI) by the implementation of a social reintegration index. Currently, Law No. 76/2002 on the unemployment security system and stimulation of employment, as amended, sets the value of the reference social

indicator at RON 500.

On the other hand, according to the Loan Agreement (Project on refurbishing the social security system) concluded by Romania and the International Bank for Reconstruction and Development (the "Loan Agreement"), one of the result indicators upon which the grant of the loan is conditional provides for the use of the same procedure for assessing the income/assets of the applicants for the housing heating aids and social aid provided under Law No. 416/2001 and the family-support allowance granted based on Law No. 277/2010.

Under such circumstances, according to the Statement of Reasons, with a view to avoiding a possible confusion generated by the lack of regulations for implementing Law No. 292/2011 and the Loan Agreement in terms of the concepts defining the social security benefits, and the failure to observe certain requirements and non-grant of the loan amounts corresponding to result indicator, GEO No. 124/2011 brings a set of amendments and supplements to the enactments listed below.

GEO No. 148/2005. The main amendments refer to the following issues:

- The persons that, in the year before the birth of the child or occurrence of the certain events (adoption, taken into foster homes, into foster homes in emergency cases or taken into guardianship), made for 12 months professional income subject to income tax according to the provisions of Law No. 571/2003 on the Fiscal Code, as amended and supplemented, shall benefit from a leave for raising the child of up to 2 years or, in the case of a child with disabilities, of up to 3 years and from monthly allowance representing 75% of the average income made in the last 12 months, for children born, adopted, given for adoption, taken into foster homes, into foster homes in emergency cases or guardianship until 31 December 2010. Starting from January 2012, the minimum and maximum amount of the monthly allowance shall be referred to SRI, and may not be less than 1.2 SRI and more than 6.8 SRI. Accordingly, the additional allowance for twin, triplet or multiple pregnancies, and the incentive provided under Article 3 (1) of GEO No. 148/2005 are established by way of reference to SRI.
- A new obligation is set, that is the beneficiaries shall have to pay their legal debts to the local budget for the assets they own in order to preserve their rights under GEO No. 148/2005. Also, a new procedure is

established to verify whether the abovementioned obligation was met.

GEO No. 111/2010. The main amendments refer to the following issues:

- The beneficiary may now choose for a leave for raising the child with disabilities of up to 3 years, and for a monthly allowance, pursuant to Article 2 (1) a) of GEO No. 111/2010.
- The minimum and maximum amounts of the allowance shall be established by way of reference to the SRI, as follows: the monthly allowance for raising the child of up to one year, and of 3 years, respectively, in the case of the child with disabilities shall be set to 75% of the average net income made in the last 12 months, and may not be less than 1.2 SRI, and more than 6.8 SRI; as to raising the child of up to 2 years, in the same percentage and within the same minimum threshold, but with a maximum ceiling of 2.4 SRI. Accordingly, by way of reference to the SRI it is set the additional allowance for twin, triplet and multiple pregnancies, as well as the reintegration incentive provided under Article 7 (1) of GEO No. 111/2010. Their reference to the current value of the SRI triggers no change in the amounts of such allowances.
- It is established the obligation of the beneficiaries to pay their legal debts to the local budget for the assets they own with a view to preserving the rights provided under GEO No. 111/2010. Also, a new procedure is established to verify whether the abovementioned obligation was met.

A set of new provisions are inserted, Articles 31 through 38, regulating rights on raising the child with disabilities until reaching the age of 7 years, and of 18 years, respectively.

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Financial Operations

1. New Regulations on Certain Financial Operations Performed by the Credit Institutions

Name of enactment

Regulation of the National Bank of Romania ("**NBR**") No. 26/2011 on temporary shareholding during operations of financial assistance or turnaround of an entity outside the financial sector (the "**Regulation**")

Publication	Official Gazette of Romania, Part I, No. 855 of 5 December 2011
Entry into force	5 December 2011
Main provisions	In implementing Article 145 of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy (the "**Banking Law**"), the Regulation sets the rules applicable to temporary shareholding by credit institutions or entities within their prudential consolidation area (hereinafter, the "**Shareholding Entity**") during operations of financial assistance or turnaround of an entity outside the financial sector, so as not to be considered qualified interest, as per Article 143 and not be applied the provisions of Article 144 of the Banking Law. The essential conditions regulated under the Regulation for such temporary shareholding: • To be acquired by full or partial conversion of the holder entity's receivables towards the held entity on the conversion date; • The holder entity shall have to formalize a general policy and strategy as to this sort of operations, on an individual or consolidated level, as the case may be: • The holder entity shall have to formalize an actual financial assistance/turnaround plan, approved by its relevant bodies; in its turn, such plan shall have to meet certain conditions (related to the additional financing/guaranteeing of the held entity of maximum 25% of the value of the exposure prior to the conversion, presentation of arguments based on a cost-benefit analysis and forecast on the recovery of the funds paid); • The holder entity shall have to formalize policies/procedures for managing the risks related to such operations, providing a ceiling for the full amount of the temporary shareholding in such operations; • The holder entity shall have to formalize methodologies suitable for assessing the shareholding to the lowest amount that may be granted thereon as per the applicable accounting framework. Any intention to acquire such shareholding shall have to be notified to NBR, at least 60 days prior to the performance of the conversion, together with a set of documents established under Article 6 of the Regulation. Should, in NBR's opinion, the above conditions not be met, the shareholding may be acquired, but shall not enjoy the derogatory regime provided under Article 145 of the Banking

Law and Regulation, and shall be deemed qualified interest as per Article 143 of the Banking Law (and shall be applied all related rules and limitations).

The value of the temporary shareholding shall be deducted from the own funds of the shareholding credit institution, on an individual or consolidated level (in consideration, however, of the adjustments made for losses related to temporary shareholding).

The maximum term of a temporary shareholding may not exceed 36 months as of the date when acquired. Upon expiry of such term, should it not be transferred outside the credit institution's prudential consolidation area, the relevant interest shall be deemed qualified interest as per Article 143 of the Banking Law. For grounded reasons related to the impact on the prudential indicators of the credit institution, NBR may approve the extension of such term once, without exceeding 48 months as of the conversion date.

Failure to comply with the provisions of the Regulation entails the implementation of the measures and/or sanctions provided by the Banking Law.

As transitory measures, Article 10 of the Regulation provides a 3-month term as of the entry into force thereof in which the credit institutions are given the possibility to comply with the provisions of the Regulation. In this case, the term of 36 (48) months shall start running as of the communication by NBR on the compliance with the conditions required for the temporary shareholding to benefit from the derogatory regime provided under Article 145 of the Banking Law.

2. New Legal Provisions on Preventing and Sanctioning Money Laundering

Name of enactment	Law No. 238/ 2011 (the "**Law**") approving Government Emergency Ordinance No. 53/2008 amending and supplementing Law No. 656/2002 on preventing and sanctioning money laundering, and establishing certain measures to prevent and fight against financing of terrorism acts ("**Law No. 656/2002**")
Publication	Official Gazette of Romania, Part I, No. 861 of 7 December 2011
Entry into force	10 December 2011 Article 16^1, as amended, of Law No. 656/2002 shall become effective within 120 days as of the entry into force of the Law.
Connections with other enactments	Government Emergency Ordinance No. 53/2008 ("**GEO No. 53/2008**") amending and supplementing Law No. 656/2002 on preventing and sanctioning money

laundering, and establishing certain measures to prevent and fight against financing of terrorism acts ("**Law No. 656/2002**")

Main provisions

The Law approves with amendments, Government Emergency Ordinance No. 53/2008, and, implicitly, amends Law No. 656/2002.

The main amendments brought by the Law refer to the following issues:

- The concepts as members of the families of individuals that have held or are holding major public offices are clarified, i.e. persons known to the public as close partners of the persons that have held or are holding major public offices;
- The obligation to notify the Office on suspect operations is extended from the employees of the legal entities listed under Article 8 of Law No. 656/2002 to all the persons performing activities for such entities;
- It is established the obligation of the Office to prepare the procedures for submitting the reports listed under Article 3 of Law No. 656/2002;
- The obligation of the persons provided under Article 8 of Law No. 656/2002 on notifying the Office is supplemented, should it be found that the funds of one or several operations performed in the account of a client are suspected of money laundering or financing of acts of terrorism;
- As to the suspending and extending the suspension of operations, the Law provides that if they are performed in breach of the legal provisions and bad faith, due to the perpetration of an unlawful act, subject to tort liability, and a loss was caused by the Office and the Prosecutor's Office attached to the High Court of Cassation and Office, the liability of the State shall be entailed for such loss;
- The persons in charge with implementing Law No. 656/2002 shall be given direct access in due time to the information and data they need to meet their legal obligations;
- The entities performing foreign exchange activities, other than those supervised by NBR, shall be authorized by the Ministry of Finance, via the Committee authorizing the foreign exchange activities. Also, the Ministry of Finance shall be competent in establishing the procedure for the authorization and/or registration of such entities, the Financial Guard being given supervisory duties with respect to the

implementation of the provisions of Law No. 656/2002;

- The Office shall be authorized to suspend the transactions intended for laundering money or financing acts of terrorism, upon request of Romanian judicial authorities or foreign institutions with similar duties, subject to keeping the secret under similar conditions, based on the justification of the requester company and if the transaction could have been suspended if it had formed the object of a report on a suspected transaction, according to Law No. 656/2002;
- The scope of minor offenses provided under Law No. 656/2002 is extended;
- It is eliminated the Government's duty to amend by means of a decision the minimum limits of the operations provided under Article 9 (1) letters b) and e) and maximum limits of the amounts provided under Article 12 letter a) of Law Nos. 656/2002.

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Legislation Related to the Activity of Court Bailiffs

Name of enactment

Law No. 287/2011 on certain measures regarding the organization of the enforcement of receivables belonging to credit institutions and non-banking financial institutions ("**Law No. 287/2011**")

Publication

Official Gazette of Romania, Part I, No. 894 of 16 December 2011

Entry into force

19 December 2011

Main provisions

Law No. 287/2011 provides new rules on the activity performed by the bailiffs acting within bailiff departments organized by the credit institutions and other entities within their group, performing financial activities, and by the non-banking financial institutions (NFI) or cooperative credit institutions.

Consequently, such bailiffs, registered according to law with the Ministry of Justice until 31 May 2011, with an actual length of service of at least 2 years from the first registration in such capacity, shall be appointed, upon request, in the position as court bailiff, if they meet the general conditions provided under Law No. 188/2000 on court bailiffs ("**Law No. 188/2000**"). Bailiffs that, within 3 months from the entry into force of Law No. 287/2011 fail to meet the seniority requirement of at least 2 years, shall be granted, upon request, the capacity as

trainee court bailiff.

The application for being granted the capacity as court bailiff (including trainee court bailiff), accompanied by the necessary supporting documents, shall be submitted to the Ministry of Justice within 3 months as of the entry into force of Law No. 287/2011. The Ministry of Justice shall have to solve the application within two months from the registration thereof, at the latest.

A noteworthy fact is that the above bailiffs are appointed as court bailiffs, or acquire the capacity as trainee court bailiff, as the case may be, without examination for being admitted to the profession and without observance of the conditions on the payment of the fees for admission to the profession.

As of the entry into force of Law No. 287/2011, the activity of enforcing enforcement orders belonging to credit institutions, other entities within their group performing financial activities, NFIs or credit cooperatives shall be performed by the competent court bailiffs only, according to law. The following exceptions from this rule are provided: (i) enforcements in progress upon the entry into force of Law No. 287/2011, which may be continued by the bailiff that initiated the enforcement, as well as (ii) new enforcements initiated upon request of the credit institutions/ NFIs between the entry into force of Law No. 287/2011 and the appointment as court bailiff of the person to perform the enforcement.

As to departments of bailiffs and the bailiffs of the credit institutions, of other entities within their group performing financial activities, NFIs or credit cooperatives, they shall cease to exist on the date the capacity as court bailiff is acquired by the above bailiffs or upon the expiry of the 3-month term as of the entry into force of Law No. 287/2011.

Continuation of activity by bailiffs belonging to their own departments of bailiffs organized by the credit institutions and other entities belonging to their group performing financial activities, NFIs or cooperative credit institutions in ways other than the ones established under Law No. 287/2011 shall be deemed offense and punished according to the provisions of the Criminal Code.

Repealed legal provision

Articles 418 (2) and (3) of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy and Article 72 (2) of Law No. 93/2009 on non-banking financial institutions, as amended and supplemented.

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Pharmaceutical Industry

Name of enactment	Government Emergency Ordinance No. 110/2011 amending and supplementing certain enactments in the fields of healthcare and social protection ("**GEO No. 110/2011**")
Publication	Official Gazette of Romania, Part I, No. 860 of 7 December 2011
Entry into force	7 December 2011
Main provisions	Government Emergency Ordinance No. 77/2011 establishing a contribution for financing certain expenses in the field of healthcare ("**GEO No. 77/2011**")

GEO No. 110/2011 regulates the new fashion of calculating the quarterly contribution due by the holders of the marketing permits or lawful representatives thereof for the medicines included in the national healthcare programs, and for the medicines with or without personal contribution, used in ambulatory treatments based on medical prescription via closed-circuit pharmacies, in hospital treatment and for medicines used in medical services provided in dialysis centres, borne by the Sole National Fund for Social Healthcare Security (FNUASS) and the budget of the Ministry of Health (known as the "clawback tax").

According to the presentation of grounds of the enactment, the regulation of the new method of calculating the clawback tax was necessary due to certain deficiencies in the wording of GEO No. 77/2011 likely to disadvantage the medicine producers whose amount of medicine sales dropped as compared to the medicine producers whose amount of sales increased. The new method of computing the above tax is regulated under Article 3^1 of GEO No. 77/2011, inserted by Article I of GEO No. 110/2011.

Consequently, starting with the 1st quarter of 2012, the new amount of the clawback tax shall be calculated according to a formula using the following values:

- The value of individual quarterly sales of medicines of each tax payer, borne by FNUASS and the budget of the Ministry of Health;
- The value of the individual quarterly reference sales of medicines of each tax payer, borne by FNUASS and the budget of the ministry of Health. This value is to be established by the National Health Insurance House ("**CNAS**"), by dividing the medicine sale of each contribution payer in 2011 to the aggregate sales which are borne,

according to law, by the above public funds in the same year and multiplying the result by RON 1.425 million;

- The value of the quarterly sales of medicines borne by FNUASS and the budget of the Ministry of Health;
- The value of aggregate reference quarterly sales of medicines borne by FNUASS and the budget of the Ministry of Health. This value is set to the fixed amount of RON 1.425 million and may be increased by annual budgetary laws.

GEO No. 110/2011 expressly provides that the different values of quarterly or aggregate sales above are **inclusive of value added tax**.

As in the case of GEO No. 77/2011 which it supplements, this enactment does not regulate legal criteria or instruments based on which the payers of the tax may verify in a transparent and objective fashion the values of medicine sales established and communicated thereto by CNAS with a view to calculating and paying the relevant quarterly tax.

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Privatisation

Name of enactment

Decision No. 18/2011 of the High Court of Cassation and Justice on the final appeal in the interest of law forming the subject matter of Case file No. 16/2011 ("**Decision No. 18/2011**")

Publication

Official Gazette of Romania, Part I, No. 892 of 16 December 2011

Connections with other enactments

- GEO No. 88/1997 on the privatization of companies, approved by Law No. 44/1998, as amended and supplemented. ("**GEO No. 88/1997**");
- Law No. 137/2002 on certain measures for the acceleration of privatization, as amended and supplemented ("**Law No. 137/2002**").

Main provisions

Decision No. 18/2011 of the High Court of Cassation and Justice (the "**Court**") sustained the appeal in the interest of law filed by the General Prosecutor of the Prosecutors' Office attached to the Court with respect to the implementation of the provisions of Article 32^4 of GEO No. 88/1997.

The final appeal in the interest of law was filed due to a non-unitary practice of Romanian courts with respect to the implementation of the provisions of Article 32^4 of GEO No. 88/1997, read together with Article 30 (3) of Law No. 137/2002, with respect to the criteria for determining the amount of damages to be awarded to

the s companies by the public institutions involved in the privatization process, due to the restitution of certain immovable assets to the former owners.

By Decision No. 18/2011, the Court ruled that the correct case law in such matters was that according to which the obligation to remedy the loss incurred by a company whose immovable assets were restituted to the former owners is limited to the inventory value (accounting value), adjusted as per the inflation rate.

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Public Procurement, Concessions and Public – Private Partnership

Name of enactment	Law No. 279/2011 amending and supplementing Government Emergency Ordinance No. 34/2006 on the award of public acquisition contracts, public work concession contracts and service concession contracts ("**Law No. 279/2011**")
Publication	Official Gazette of Romania, Part I, No. 872 of 9 December 2011
Entry into force	12 December 2011
Connections with other enactments	Government Emergency Ordinance No. 34/2006 on the award of public acquisition contracts, public work concession contracts and service concession contracts, approved as amended and supplemented by Law No. 337/2006, as amended and supplemented ("**GEO No. 34/2006**")
Main provisions	Law No. 279/2011 brought new amendments to GEO No. 34/2006; some of such amendments are listed below:

Rules to Participate in the Procedure

The amendments brought by Law No. 279/2011 provide that one and the same entity may not submit an individual bid/partnership bid and be appointed as third party supporting another bid at the same time, subject to the sanction of excluding the individual bid/partnership bid.

Implementation of the Negotiation Procedure without a prior Publication of a Tender Notice upon the Acquisition of additional works/services

Further to the amendments brought by Law No. 279/2011, the negotiation procedure without a prior publication of a tender notice may be implemented upon the acquisition of additional works/services, in addition to the observance of the other requirements provided by law, only when the aggregate amount of the additional works/services is 20% of the amount of the initial contract, at the most; at the same time, it is eliminated the possibility that, in certain cases, the

aggregate value thereof may reach 50% of the amount of the initial contract, at the most.

Amendment of the Qualification and Selection Criteria and Assessment Factors

The amendments brought by Law No. 279/2011 established that the amendment/supplementation of the qualification and selection criteria under the participation notice/invitation and in the awarding documentation (except for the amendments ordered by the decision of the National Council for Solving Complaints – "**CNSC**") entail the annulment of the awarding procedure. Similar provisions were inserted with respect to the assessment factors.

Assignment of the Receivables arising out of Public Procurement Contracts

The amendments brought by Law No. 279/2011 provide that only the assignment of the receivables arising out of public procurement contracts is permitted and the debts arising out of public procurement contract shall be incumbent upon the contracting parties, as initially established and undertaken.

Annulment of the Awarding Procedure

The amendments brought by Law No. 279/2011 inserted a distinction between the situations in which the contracting authority has the obligation to annul the awarding procedure.

Under such circumstances, when during an awarding procedure the number of participants is lower than the number set by the legal provisions, such situation is deemed to entitle the contracting authority to annul the procedure. Also, the contracting authority shall be entitled to annul the awarding procedure if CNSC orders the amendment/elimination of any technical specifications in the tender specifications or other documents issued in connection with the awarding procedure (in which situation, the procedure would alternatively continue further to the amendment/elimination of such specifications by the contracting authority).

Prescription of Civil Sanctions' Enforcement

Further to the amendments brought by Law No. 279/2011, the prescription term for the enforcement by the National Authority for Regulating and Monitoring Public Procurement ("**ANRMAP**") of the civil sanctions for the misdemeanours consisting of the failure to comply with the legal provisions in public procurement matters increased from 24 months to 36 months from the perpetration of the act.

Establishment of Absolute Nullity of Public Procurement Contracts upon request of ANRMAP

The provisions of Law No. 279/2011 brought amendments to the cases when ANRMAP benefits from the legal capacity to sue in order to request the courts to find the absolute nullity of public procurement contracts. Consequently, the situations in which (i) the qualification and selection criteria/assessment factors provided in the participation invitation/notice were not complied with/were amended and (ii) the amendment of the contract resulted in a decrease of advantages and of the assessment factors underlying the award, as the case may be, were inserted.

Also, it was inserted the possibility of a temporary stay by the court, until the settlement of the merits of the case, of the performance of the public procurement contract, for which ANRMAP claimed in court its absolute nullity.

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Real Estate

Name of enactment	Law No. 221/2011 amending para. (2) of Article 29 of Law No. 350/2001 on the land development and town planning ("**Law No. 221/2011**")
Publication	Official Gazette of Romania, Part I, No. 853 of 2 December 2011
Entry into force	5 December 2011
Connections with other enactments	• Law No. 350/2001 on land development and town planning ("**Law No. 350/2001**"); • Law No. 50/1991 authorizing the performance of construction works ("**Law No. 50/1991**").
Main provisions	Law No. 221/2011 was mainly passed to harmonize Law No. 350/2001 with Law No. 50/1991, given the fact that both laws sustained, throughout the time, many legislative amendments. Further to the amendment and supplementation of para. (2) of Article 29 by Law No. 221/2011, the urban planning certificate shall be issued for: • The award by means of a tender of works of design and construction of public works; • Preparation of cadastral documentations for joining and separating lands, respectively, in at least 3 plots, when such operations concern a separation or joining of plots for the purpose of performing

construction and infrastructure works;

- Establishment of an easement right of way for an immovable asset.

By way of corroboration with Law No. 50/1991, the above legal operations are null and void when performed in the absence of the urban planning certificate.

Requesting an urban planning certificate when the land separating or joining operations form the subject matter of termination of joint ownership shall be facultative, except for the situation in which the request is filed with a view to performing construction works and/or infrastructure works.

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Taxation

Name of enactment

Government Emergency Ordinance No. 125/2011 amending and supplementing Law No. 571/2003 on the Fiscal Code ("**GEO No. 125/2011**")

Publication

Official Gazette of Romania, Part I, No. 938 of 30 December 2011

Entry into force

GEO No. 125/2011 becomes effective on 30 December 2012.

Connections with other enactments

- The amendments brought to Law No. 571/2003 on the Fiscal Code shall become effective on **1 January 2012**, except for certain provisions, for which special entry into force terms are provided;
- Law No. 571/2003 on the Fiscal Code (the "**Fiscal Code**").

Main provisions

The primary amendments brought to the Fiscal Code are as follows:

Profit Tax

With a view to clarifying the fiscal treatment applicable to taxpayers declared inactive according to law, it is provided that such taxpayers shall be subject to the obligations on the payment of the taxes and duties provided by the Fiscal Code, but shall not enjoy the right to deduct the expenses and VAT related to the acquisitions made in such period. At the same time, the beneficiaries that purchase goods and/or services from taxpayers, subsequent to their registration as inactive in the Register of inactive/reactivated taxpayers, shall not be entitled to deduct the expenses and VAT related to such acquisitions, except for acquisitions of goods made during enforcement proceedings.

In a similar fashion, the taxpayers whose registration for VAT purposes was annulled, according to the provisions of Article 153 (9) letters b) through e) of the Fiscal Code shall not be entitled to deduct the VAT related to the acquisitions

made in such period, but shall have to pay the collected VAT related to the taxable operations carried out in such period, and the beneficiaries purchasing goods and/or services from such taxpayers shall not be entitled to deduct the value added tax related to such acquisitions, except for the acquisitions of goods made during enforcement proceedings.

New detailed fiscal rules are inserted with a view to assisting upon the calculation of the profit tax by the taxpayers implementing the international financial reporting standards. At the same time, it is supplemented the list of non-taxable income upon the calculation of taxable profit of such taxpayers, as well as the method of making quarterly advanced payments.

GEO No. 125/2011 supplements the list of deductible and non-deductible expenses and of reserves and provisions, by adding the following:

- Expenses incurred due to the repayment of subsidies granted, according to law, by the Government, Governmental agencies and other domestic and international institutions;
- Expenses incurred with the benefits granted to employees as capital instruments with cash settlement upon actual grant of benefits, if they are taxed according to Title III (Income Tax).
- 50% of the expenses incurred with fuel for the motor vehicles exclusively intended for road person transportation, which vehicles are owned or used by the taxpayer. This provision is regulated in a similar fashion as the income tax is concerned. In addition, under such circumstances we have to add the 50% deductibility of VAT upon purchasing such vehicles and the fuel required to their use.

Income Tax

The income made from selling movable assets as waste via collection centres, for scrapping purposes, which form the object of national programmes financed by the State budget or other public funds are not to be deemed as taxable income, and such provision shall be effective as of 30 December 2011.

Taxpayers performing activities for which the net income is determined based on income rates shall have to fill in the part of the Cash Income and Expenses Ledger referring only to incomes, according to the accounting regulations prepared to this effect.

Taxpayers, for whom the net income is established based on income rates and

which, in the previous year, have registered a gross annual income higher than the equivalent in RON of EUR 100,000, shall have to calculate the net annual income in real system, starting with the following tax year. This taxpayer category shall have to fill in and submit the statement on the forecasted income/income rate by 31 January, inclusively. The foreign exchange rate used in calculating the equivalent in RON of EUR 100,000 shall be the average annual exchange rate communicated by the National Bank of Romania, at the end of the tax year.

As to withholding the tax representing advance payments for certain income from independent activities, the legal entity payers or other entities that have to keep accounting shall have to calculate, withhold and transfer the tax representing advance payments, from paid income, for the following incomes: a) income from intellectual property rights; b) income from activities performed on the basis of contracts/civil agreements concluded according to the Civil Code, and agency agreements; c) income from the accounting and technical, forensic and extrajudicial expert appraisal activity; d) the income made by an individual from a partnership with a legal entity taxpayer, which does not generate a legal entity. The tax shall be computed by applying the 10% quota to the gross income, from which the mandatory social contributions are to be deducted. As to the income made by the legal entity from the partnership, the tax shall be computed by applying the 3% quota to its share of the income.

The payment term is changed from the 15th to the 25th of the last month of each quarter for the taxpayers making income from independent activities (commercial, liberal professions, service provision), transfer of assets' use, etc.

Income made by non-residents in Romania

The income generated by transactions with derivative instruments used to perform risk management operations related to obligations such as the Governmental public debt are exempted from the tax on the income made in Romania by non-residents.

VAT

It is assimilated with the provision of services in exchange of payment the use of assets, other than capital assets, which are part of the assets used in the course of the business activity of the taxable person, for personal use or for use by its employees, or for being made available to other persons for being used for free, other than in the performance of its business activity, if the tax for such assets was deducted in full, or in part, except for the assets whose acquisition is subject to a

50% limitation of the deduction right, according to Article 145[1] of the Fiscal Code (*Special limitations of the deduction right*), which provides as a novelty that a VAT deduction right in proportion of 50% is granted for the acquisition of motor vehicles exclusively intended for road person transportation and for the acquisition of the fuel to be used by such vehicles. Noteworthy, this limitation of the deduction right shall apply including when invoices were issued and/or advance payments were made for the partial equivalent value of the motor vehicles, prior to 1 January 2012, if the delivery thereof occurs subsequent to 1 January 2012, inclusively.

As to the due date of the VAT in case of advance payments, the exception providing that the advance payments collected for the payment of imports and value added tax related to import, and any other advance payments collected for exempted operations or operations which are not taxable was repealed.

The section regarding the tax-exempted operations defines the concept of new construction, which also includes any transformed construction or transformed part of a construction, if the cost of such transformation, exclusive of VAT, reaches a minimum of 50% of the market value of the construction or part of the construction, as established by an expert appraisal report, exclusive of the land value, further to such transformation. Asset deliveries earmarked for a certain exempted activity, if the tax for such assets was not deducted, as well as asset deliveries whose acquisition was subject to the exclusion of the deduction right, according to Article 145 (5) b) or to **total** limitation of the deduction right, according to Article 145[1] are tax-exempted operations.

The concept of capital assets is changed, in the light of the deductible VAT's adjustment, in the sense that depreciable fixed tangible assets whose normal time of use established for fiscal depreciation purposes is less than 5 years shall not be deemed capital assets. Fixed tangible assets such as depreciable fixed assets which are being leased shall be deemed capital assets with the lessor/financer, if the minimum limit of the normal time of use is equal to or higher than 5 years.

The taxable person registered for VAT purposes in accordance with Article 153 that, during the previous calendar year, remains below the exemption ceiling of EUR 35,000 or, the ceiling established according to para. (5) for the newly established taxable person starting a business activity during a calendar year, as the case may be, may request deregistration from the register of persons registered for VAT purposes. Until the decision cancelling the registration for VAT purposes is communicated, the taxable person shall have all rights and obligations

of a person registered for VAT purposes, according to Article 153.

The taxable person requesting, according to the above procedure, deregistration from the register of taxable persons registered for VAT purposes, but having the obligation to register for tax purposes, according to Article 153[1], shall have to request registration for VAT purposes, as per such procedure, at the same time with the request for deregistration from the register of taxable persons registered for VAT purposes. Registration for VAT purposes, according to Article 153[1], shall be valid as of the cancellation of the registration for VAT purposes. Such provisions shall also apply when the taxable person chooses for registration for VAT purposes, according to Article 153[1], at the same time with the de-registration from the register of taxable persons registered for VAT persons, according to Article 153.

Taxable persons that are neither settled, nor registered for VAT purposes in Romania, may request registration for VAT purposes if they perform one of the following operations in Romania: a) imports of goods; b) land lease, concession, lease and leasing of immovable assets, if they choose for the taxation thereof; c) delivery of buildings/parts of buildings and lands on which the same are constructed, as well as any other lands, if they are taxable by operation of law or option.

The possibility of tax authorities to cancel, *ex officio* or upon request of the taxable person, as the case may be, the registration of a person for VAT purposes, in the situations the person was declared inactive or are under temporary inactivity, is extended to reach the following cases:

- If the fiscal record of the taxable person's shareholders, or of the very taxable person shows offenses and/or other acts provided under the applicable legislation, as of the communication of the cancellation decision by the relevant tax authorities;
- If it failed to submit any tax deduction claim throughout a calendar semester, and is not declared inactive or is in temporary inactivity, as of the first day of the second month following such calendar semester. Such provisions shall apply only to the persons for which the fiscal period is the month or quarter;
- If the tax deduction claims submitted for 6 consecutive months during a calendar semester show neither acquisitions of goods/services, nor deliveries of goods/provision of services performed during such

reporting periods, from the first day of the second month following such calendar semester, in the case of the persons whose fiscal period is the calendar month, and for two consecutive fiscal periods during a calendar semester, in the case of the taxable persons whose fiscal period is the calendar quarter;

- If the person had no obligation to request the registration or had no right to request the registration for VAT purposes, according to the provisions of the Fiscal Code;
- In the situation provided under Article 152 (7) of the Fiscal Code, i.e. deregistration of the persons registered for VAT purposes with a view to implementing the special exemption regime, upon request of the taxable person.

Subsequent to the cancellation of the registration for VAT purposes, the relevant tax authorities shall register the taxable persons for VAT purposes as follows:

- Ex officio, as of the cessation of the situation which led to the cancellation of the registration for the taxpayers declared inactive or that are under temporary inactivity;
- Upon request of the taxable person, in case entries were made in the fiscal records of the latter or of its shareholders and were cancelled, if the situation which led to cancellation ceases, as of the communication of the decision for registration for VAT purposes;
- Upon request of the taxable person, in case the latter failed to submit the tax deduction claim throughout a certain calendar semester, as of the communication of the decision for registration for VAT purposes, based on the following information/documents supplied by the taxable person: 1) presentation of the tax deduction claims that were not submitted when due; 2) presentation of a substantiated request assuring that the tax deduction claims shall be submitted within the terms provided by law. After the first breach, taxable persons shall be registered for VAT purposes if they meet all the conditions provided by law, only after a period of 3 months as of the cancellation of the registration. If the breach reoccurs subsequent to the registration of the taxable person, the tax authorities shall cancel the code for registration for VAT purposes and shall not grant other potential requests for a new registration.

- Upon request of the taxable person, in case deregistration was due to the submission of tax deduction claims which have entries neither as to the acquisitions of goods/services, nor as to deliveries of goods/provision of services, based on an affidavit attesting to the fact that it shall perform economic activities in the month following the month when it requested the registration for VAT purposes, at the latest. Should the taxable person fail to submit an application for registration for VAT purposes within maximum 180 days as of the cancellation date, the tax authorities shall not grant any potential subsequent applications for a new registration for VAT purposes.

Taxable persons in the situations above may not apply the provisions on the special exemption regime for small-sized undertakings until the registration for VAT purposes, and the provisions of Article 11 (1^1) and (1^3) of the Fiscal Code shall apply, *i.e.* such persons shall not be entitled to deduct the VAT related to the acquisitions performed in such period, but shall have to pay the collected VAT related to taxable operations performed in such period.

The National Agency for Fiscal Administration shall set up the register of taxable persons registered for VAT purposes and the Register of taxable persons whose registration for VAT purposes was cancelled. Registers are public and shall be posted on the site of the National Agency for Fiscal Administration.

As to registration with the Intra-Community Operators' Register, the authorities shall request the criminal records only to the shareholders that hold at least 5% of the share capital of the companies registered in Romania.

In the past, the criminal records had to be submitted by all the shareholders of such companies, irrespective of their shareholding.

GEO No. 125/2011 detail the categories of wastes for whose delivery a reverse taxation shall apply.

Excise duties

As of 1 April 2012, the term for the payment of excise duties for the registered addressees shall be the business day immediately following the day when the excisable products were received.

The excise duty for diesel oil increased on 1 January 2012 by 4.5% as compared to 2011.

Local taxes

A new category of buildings for which no tax on buildings is due is inserted, *i.e.* the buildings in the State's private ownership which are conceded, leased, given for management or use, as the case may be, to public institutions financed by the State budget, used for their own activity.

The distinction in the previous regulation as to the type of transportation (domestic or international) for which the mean of transportation is used was eliminated with a view to establishing the tax on transportation means due for motor vehicles/combinations of motor vehicles with a full permitted weight equal to or higher than 12 tons.

The term for paying the tax for advertising and publicity displaying is modified.

Social security contributions

Starting from 1 July 2012, the Fiscal Code shall regulate and the National Agency for Fiscal Administration ("**ANAF**") shall take over, the social security contributions, unemployment contributions and health contributions for the following categories of persons:

- Persons making income from independent activities, agricultural activities and partnerships with no legal status, *i.e.*: authorized individuals, persons making income from liberal professions, members of an individual or family undertaking, persons making income from intellectual property rights
- Persons making other income, such as income from assigning the use of assets, from investments, prizes and winnings from gambling, fiduciary operations or other sources
- Persons not making any income.

In general terms, as to the social security contributions due for income made from salaries, pensions and other income from dependent activities, one may notice a re-systematization of the former legal provisions, and a particularization of the categories of income included in the basis of calculation of the mandatory social security contributions, and of the categories of income excluded from the payment of one or several sorts of contributions.

As to persons making income from independent, agricultural activities and partnerships with no legal status, they shall owe contributions to the public pension system and social health securities; GEO No. 125/2011 includes precise

regulations on the method of calculating the monthly basis of calculation of the related contributions. In a fashion similar to the situation of the income tax, this category of taxpayers shall make advance payments of social security contributions based on the taxation decision issued by the tax authority as a result of the tax return submitted by the taxpayer. The taxation decision shall reveal the monthly amount to be paid, while the actual payment shall be made in four equal installments, until the 25th of the last month of each quarter, including such day.

Persons not making income from dependent activities, unemployment benefits or independent activities (except for the income from intellectual property rights) shall have to pay the social health security contribution for the income made from assigning the use of assets, from investments, prizes or winnings from gambling, fiduciary operations or other sources expressly regulated. The Fiscal Code includes provisions on establishing the calculation basis and the actual payment of the specified contribution, further to the issuance of the annual taxation decision.

Last, but not least, persons not making any income shall have to pay the monthly social health security contribution, with the monthly calculation basis being the gross minimum salary in the country.

As of 1 July 2012, the competence over managing the mandatory social security contributions due by the persons making income from independent activities, other income, or persons not making any income shall be transferred onto ANAF from the social security houses. As of such date, the contributions due by the specified persons shall be paid at the relevant State Treasury units.

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