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Legal Bulletin

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Accounting

Name of the enactment	Order of the Minister of Public Finance No. 52/2012 on the main issues related to the preparation and submission of annual financial statements and annual reports to the territorial units of the Ministry of Public Finance ("**Order No. 52/2012**")
Publication	Official Gazette of Romania, Part I, No. 46 of 19 January 2012
Entry into force	19 January 2012
Connections with other enactments	• Accounting Law No. 82/1991 ("Accounting Law"); • Order of the Minister of Public Finance No. 3055/2009 approving the Accounting Regulations compliant with the European Directives ("Order No. 3055/2009"); • Order of the Minister of Public Finance No. 2239/2011 approving the Simplified Accounting System ("Order No. 2239/2011").
Main provisions	Order No. 52/2012 is applied by: • The entities applying the Accounting Regulations compliant with Directive IV of the European Economic Communities, integral part of the Accounting Regulations compliant with the European Directives, approved by Order No. 3055/2009; • The entities applying the Simplified Accounting System, approved by Order No. 2239/2011. The main novelty brought by Order No. 52/2012 refers to the regulation on preparing and submitting the simplified financial statements, further to the issuance of Order No. 2239/2011 approving the Simplified Accounting System. The entities that have to submit annual financial statements are provided under the Accounting Law; nevertheless, according to Order No. 52/2012 the contents of the annual financial statements differ as per the size of the entities. The criteria used to determine the said size are provided under Order No. 3055/2009, i.e.: • Total assets: EUR 3,650,000; • Net turnover: EUR 7,300,000;

- Average number of employees: 50.

The entities which, as of the balance sheet date, exceed the limits of two out of the 3 criteria above shall prepare financial statements including:

- Balance sheet (code 10);
- Profit and loss account (code 20);
- Statement on changes in the equity;
- Statement of cash flows;
- Explanatory notes to the annual financial statements.

Such documents shall be accompanied by the "*Informative Data*" Form (code 30) and the "*Statement on long-term assets*" (code 40), whose templates are approved by Order No. 52/2012.

The entities which, as of the balance sheet date, do not exceed the limits of two of the size criteria above, shall prepare short version annual financial statements, including:

- Short version balance sheet (code 10);
- Profit and loss account (code 20);
- Explanatory notes to the shortened annual financial statements.

In addition, such documents shall be accompanied by the *"Informative Data"* Form (code 30) and the *"Statement on long-term assets"* Form (code 40). Optionally, they may prepare the statement on changes in the equity and/or statement of cash flows.

As to the entities registering a net turnover below the equivalent in RON of EUR 35,000 and a total of assets below the equivalent in RON of EUR 35,000 in the previous financial year, they may choose for a simplified accounting system. Consequently, the companies that cumulatively meet such size criteria shall prepare simplified annual financial statements including:

- Simplified balance sheet (code 10),
- Profit and loss account (code 20).

They shall be accompanied by the *"Informative Data"* Form (code 30) and the *"Statement on long-term assets"* Form (code 40).

Other relevant provisions of Order No. 52/2012 contemplate the terms for

submitting the annual financial statements and simplified annual financial statements to the territorial units of the Ministry of Public Finance.

Consequently, according to the new regulations, the terms for submitting the annual financial statements to the territorial units of the Ministry of Public Finance are as follows:

- For business companies, national companies, *regies autonomes,* national research and development institutes, 150 days as of the end of the financial year;
- For the other entities provided under Art. 1 of Accounting Law (*i.e.* cooperative companies and the other legal entities), 120 days as of the end of the financial year;
- Subunits in Romania belonging to certain legal entities headquartered or domiciled abroad, except for subunits opened in Romania by companies residing in States belonging to the European Economic Area, shall submit annual financial statements closed on 31 December to the territorial units of the Ministry of Public Finance within 150 days as of the end of the financial year.

Repealed enactments	Order of the Minister of Public Finance No. 2870/2010 on the main aspects related to the preparation and submission of the annual financial statements and annual reports to the territorial units of the Ministry of Public Finance.
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Capital Markets

Name of enactment	Regulation of the Romanian National Securities Commission No. 18/2011 amending and supplementing certain regulations of the Romanian National Securities Commission in accordance with the provisions of Law No. 287/2009 on the Civil Code ("**RNSC Regulation No. 18/2011**")
Publication	Official Gazette of Romania, Part I, No. 2 of 3 January 2012
Entry into force	3 January 2012
Connections with other enactments	RNSC Regulation No. 18/2011 brings a set of amendments to the following enactments:

- Regulation of the National Securities Commission No. 13/2005 on the authorization and operation of the central depository, clearing houses and central counterparties, as amended and supplemented ("**RNSC**

Regulation No. 13/2005");

- Regulation of the National Securities Commission No. 5/2010 on the use of the global account system, implementation of mechanisms with or without a prior validation of financial instruments, performance of loan of securities and operations to set up guarantees related thereto and sale transactions *in absentia* ("**RNSC Regulation No. 5/2010**").

Main provisions

By the provisions of this enactment, the legislative authority attempts to adapt the legal framework specific to capital markets to the new rules imposed in the national legislation following the entry into force of the New Civil Code.

Consequently, Regulation No. 18/2011 brings certain amendments to the legal requirements on establishing and enforcing movable hypothec/financial guarantees on securities. The most important amendments concern the following matters:

- Rules on setting-up/registering movable hypothec
  - Registration of movable hypothec shall have to indicate the quantity of securities subject to the hypothec, guaranteed debt and identity of the person setting up the hypothec, debtor of the guaranteed debt (if different from the person setting up the hypothec) and hypothec; hypothecs shall meet the requirements of opposability and hypothec rank establishment starting from their registration only;
  - The rank of movable hypothec is established as per the order of registering the movable hypothec, which is revealed by the time the hypothec was registered in the account of the person setting it up, by indicating the exact date and hour (expressed in hours, minutes and seconds) in the document issued by central depository which confirms the registration of the movable hypothec.
- Rules on enforcing movable hypothec / financial guarantees
  - Whether done by parties' consent, or by support of the court bailiff, enforcement of movable hypothecs shall be performed according to the rule that the securities subject to enforcement shall be capitalized by means of an agent, on a regulated market or in an alternative trading system, through the "special sale" method; same rule shall apply to the enforcement of financial

guarantees set up on securities, when the financial guarantee agreement provides such method of enforcement by sale of the securities;

- The person setting up the hypothec may transfer the securities subject to the hypothec only if he notifies the central depository in advance on the intention to transfer such securities;
- Should the securities subject to the hypothec be transferred, the hypothec shall be transferred onto the funds or other securities arising out of the securities subject to the hypothec; at the same time, in this situation, the person setting up the movable hypothec shall have to notify the creditor of the guaranteed debt, subsequent to the transfer, on the substitution of the hypothec;
- The securities contemplated by the agreement for financial guarantee without transfer of ownership shall be possible only if the parties agreed to such possibility of enforcing the financial guarantee;
- In case of garnishment/ seizure, the central depository, or the relevant participant in the central depository's system, as the case may be, shall proceed to seize an amount of securities to be established by the court bailiff via the notice setting up the garnishment/ seizure, inasmuch as necessary to the satisfaction of the debt subject to enforcement by means of garnishment/ seizure;
- The security sale operations in case of enforcement shall be registered by the market operator, or system opera6tor administering the regulated market/ alternative trading system, as the case may be, by means of the communication systems thereof.

As to the amendments brought to RNSC Regulation No. 5/2010, correlated with those brought to Regulation No. 13/2005, we note that they address the rules on the central depository's monitoring of the loans of securities, and operations to set up the guarantees related thereto, performed in global/ individual accounts opened on behalf of clients.

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Commercial Law

Name of enactment	Law No. 302/2011 amending para. (1) of Article 11 of Chapter II of tile VII of Law No. 247/2005 on reform in the fields of property and justice, and certain related measures ("**Law No. 302/2011**")
Publication	Official Gazette of Romania, Part I, No. 16 of 9 January 2012
Entry into force	12 January 2012
Connections with other enactments	Law No. 247/2005 on reform in the fields of property and justice, and certain related measures, as amended and supplemented ("**Law No. 247/2005**")
Main provisions	The sole article of Law No. 302/2011 extends the term provided under Law No. 247/2005 on the completion of the legal procedures for carrying out public sale tenders for share stocks of at least 5% issued by the companies provided under the Appendix to Title VII (The regime of establishing and payment of damages afferent to immovable assets abusively deprived) of Law No. 247/2005 with a view to having them listed on the Bucharest Stock Exchange until 31 December 2012.
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Competition Law

Name of enactment	Order of the Competition Council No. 941/2011 on the implementation of the regulation amending and supplementing the Regulation on economic concentrations, implemented by Order of the President of Competition Council No. 385/2010 ("**Amending Regulation**")
Publication	Official Gazette of Romania, Part I, No. 23 of 11 January 2012
Entry into force	11 January 2012
Connections with other enactments	• Order of the Competition Council No. 385/2010 for the implementation of the Regulation on economic concentrations ("**Regulation on Economic Concentrations**"); • Competition Law No. 21/1996 ("**Competition Law**").
Main provisions	The main amendments of the Regulation on economic concentrations are as follows: • Should the specific circumstances of an economic concentration operation fail to reveal for sure whether such operation is subject to the notification obligation or not, the parties shall notify the concentration operation for legal certainty.

- According to the amendment, the Competition Council may notify other public institutions or authorities should they found issues falling under the competence of such institutions, such as potential breaches to the laws in the taxation field.
- It is implemented **a procedure on the economic concentrations likely to show risks to national security**. According to the procedure:
  - Should an operation for the takeover of control over certain undertakings or assets show risks to the national security, the Government, upon proposal from the Supreme Council of National Defense, may issue a decision prohibiting such operation;
  - To this effect, upon the registration of a notice on an economic concentration, the Competition Council shall inform the Supreme Council of National Defense/ entity appointed by the latter, by means of an infrastructure of an infrastructure of classified data, the operation's registration number and basic information on the transaction (way of achievement, parties and identification data thereof, parties' line of business in the concentration and scope of transaction);
  - Within 30 days, the Supreme Council of National Defense shall inform the Competition Council whether, in its opinion, the notified operation is likely to be analyzed from a national security standpoint and the competition authority shall notify the parties accordingly;
  - Should the process of analyzing the concentration from a national security standpoint be initiated as well, the parties shall directly provide the Supreme Council of National Defense with the information and documents necessary to conduct the analysis, ensuring the confidentiality of such information;
  - The analysis on the risks to national security is to be carried out in parallel with the analysis of the Competition Council and is to be carried out within maximum 45 days as of the communication by the parties to concentration of all pieces of information and documents required;
  - The result of the analysis shall be served within 5 days on the

parties to the concentration, and the Government, should the Supreme Council of National Defense propose the issuance of a Government decision prohibiting the operation;

- Should an economic concentration be carried out, but not exceeding the notification ceilings provided under Article 14 of the Competition Law, the party or parties acquiring control shall directly provide the Supreme Council of National Defense with a report including the data necessary with a view to analyzing the transaction from the standpoint of national security.

- Adjustments are made to certain concepts and procedures (*e.g.* "*the concept of undertaking*", the procedure on commenting on the investigation report, enforcement of the fining sanction) with a view to rendering them compliant with the provisions to-date of Competition Law No. 21/1996 and the Treaty on the functioning of the European Union.

- It is inserted the principle of analysis symmetry with respect to the simplified procedure and the full notification procedure. As per the circumstances of the case, in case a simplified notification form is submitted, the authority may decide to return to the full analysis procedure. Similarly, the Competition Council may decide that an economic concentration for which a full notification form was submitted be analyzed according to the rules of the simplified procedure. Also, the list including the cases to which the simplified notification procedure applies is changed into an exemplificative list.

- The cases in which an economic concentration operation is subject to notification both in Romania, and in at least another Member State of the European Union, the parties to the concentration are advised to grant permission to the Competition Council to communicate confidential information on the operation in question to the competition authorities in the Member States involved in assessing the same economic concentration. To this end, the Parties may provide the competition Council with the Form on the communication of confidential information, provided under Appendix No. III to the Regulation on economic concentration.

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Employment

Name of enactment	Government Decision No. 1256/2011 on the operation conditions, and the procedure for authorizing the temporary-work agency ("**GD No. 1256/2011**")
Publication	Official Gazette of Romania, Part I, No. 5 of 4 January 2012
Entry into force	3 February 2012
Connections with other enactments	Law No. 53/2003 – Labor Code (the "**Labor Code**")
Connections with EU legislation	Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work, published in Official Journal of the European Union No. 327/05.12.2008 ("**Directive 2008/104/EC**")
Main provisions	GD No. 1256/2011 transposes the provisions of Directive 2008/104/EC in the Romanian legislation.

Applicability

GD No. 1256/2011 shall apply to:

- All legal, public or private entities, authorized to operate as temporary-work agency;
- The use of temporary-work agencies carrying out economic activities, irrespective whether they are non-profit associations or not;
- Persons that concluded a temporary employment agreement with a temporary-work agency and are made available to certain users to work on a temporary basis under the management and supervision thereof. Foreigners or stateless persons domiciled or residing in Romania may be employed as temporary-work agencies based on the work permit or stay permit issued for working purposes.

Relevant amendments on the permitting process

With a view to obtaining the operation permit, applicants shall have to meet the following cumulative conditions:

- Be legal entities organized and existing under the laws and the main line of business must be "Temporary contracting of personnel, according to NACE Code";
- Not have debts to the State or local budgets;
- Not have fiscal record for acts punished by the financial and customs

laws, and acts concerning financial discipline;

- Must not have received civil sanctions for the past 24 months prior to the submission of the permitting application, for breaching the labor, commercial and tax laws; misdemeanours against which an action in court was filed shall be taken into consideration only if a final and irrevocable court decision was passed until the settlement of the permitting application;
- Set up the financial security in the amount provide under Article 5 of GD No. 1256/2011.

Relevant amendments on the operation of temporary-work agents

The provisions of GD No. 1256/2011 set out a rule according to which, for each new temporary work assignment between the same parties, a new temporary employment agreement is to be concluded, which agreement shall provide all the mandatory issues provided under Article 94 (2) of the Labor Code which is amended.

As to the rights of temporary employees throughout the temporary-work assignment, they shall be applied at least all the basic work and employment conditions established by law, internal regulations or other specific regulations applicable to the user.

In addition, if the temporary-work agency and the temporary employee conclude an individual employment agreement for an indefinite period, the latter shall be granted access to all the facilities of the temporary-work agency, in terms of training and legal provisions on raising and taking care of the child.

The situations in which the operation permit is withdrawn are expressly and restrictively provided, as follows:

- The temporary-work agency undergoing insolvency proceedings provided by Law No. 85/2006 on insolvency proceedings, as amended and supplemented;
- In case the civil sanctions provided under Articles 22 paragraphs (1) and (2) of GD No. 1256/2011 are applied.

GD No. 1256/2011 no longer provides for a mandatory term in which the temporary-work agency whose operation permit was withdrawn is prohibited from applying for the issuance of a new such permit.

Relevant amendments on the sanction-enforcement system

GD No. 1256/2011 extends the number of cases in which the failure to comply with certain legal provisions is deemed a misdemeanour, amending at the same time the amount of applicable fines. The following shall be deemed misdemeanours and shall be sanctioned by fine:

- Breach of the rights of the temporary employees throughout the temporary work assignment in terms of work and employment conditions;
- Failure to comply with the obligations of the user of temporary employees, as provided under Article 19;
- Temporary-work agency provides the user with a number of up to 5 persons without concluding a temporary employment agreement.

Repealed enactments	GD No. 938/2004 on the conditions for the incorporation and operation, and procedure for authorizing the temporary-work agency.
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Exercise of the Legal Profession

Decision	Constitutional Court Decision No. 1519/2011 on the plea for the unconstitutionality of the provisions of Article 21 (1) of Law No. 51/1995 on the organization and exercising of the legal profession ("**Decision No. 1519/2011**")
Publication	Official Gazette of Romania, Part I, No. 67 of 27 January 2012
Legal effects	The provision declared unconstitutional shall cease its legal effects after 45 days as of the publication of Decision No. 1519/2011 in the Official Gazette of Romania, *i.e.* 5 March 2012, if such provisions are not harmonized with the provisions of the Constitution of Romania during such interval. Throughout such term, the provisions found unconstitutional shall be stayed by operation of law.
Connections with legal enactments	Law No. 51/1995 on the organization and exercising of the legal profession ("**Law No. 51/1995**")
Main provisions	Decision No. 1519/2011 declared unconstitutional the provisions of Article 21 (1) of Law No. 51/1995: "The legal profession may not be exercised in courts and prosecution offices attached thereto, including the National Anticorruption Directorate, Directorate for Investigating Organized Crime and Terrorism, High Court of Cassation and Justice or Prosecution Office attached to the High Court of Cassation and Justice, where the spouse of the attorney at law or relative or in-

law up to the third degree, inclusively, has the capacity as judge or prosecutor, irrespective of the division, directorate, department or office where he/she carries out his/her activity."

The Constitutional Court considered that the provisions above are in breach of the Romanian Constitution's Article 24 (2) guaranteeing the parties to a lawsuit the right to be assisted by a hired or public defender. The limitation of the right to defense by Article 21 (2) mentioned above was not deemed justified by the desiderate of securing the court's impartiality, the Constitutional Court deeming that this is fully secured by other legal means, particularly by the regulation in the Civil Procedure Code and the Criminal Procedure Code of the institution of abstention and recusal of judges or prosecutors.

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Financial Services

Name of enactment	Government Ordinance No. 1/2012 amending and supplementing certain enactments in the field of credit institutions ("**GO No. 1/2012**")
Publication	Official Gazette of Romania, Part I, No. 41 of 18 January 2012
Entry into force	21 January 2012
Connections with other enactments	GO No. 1/2012 amends a set of enactments in the banking sector, as follows: • Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, as amended and supplemented ("GEO No. 99/2006"); • Government Ordinance No. 39/1996 on the incorporation and operation of the deposit warranty fund in the banking system, as amended and supplemented ("GO No. 39/1996").
Main provision	The provisions of GO No. 1/2012 brought a set of amendments to GEO No. 99/2006; the most relevant amendments refer to the following aspects: • As to qualifying holdings, GO No. 1/2012 provides that the notice concerning the purchase of a qualifying holding in credit institutions may be served on the date of such purchase as well, if such notice may not be served in advance for reasonable grounds; • GO No. 1/2012 inserts the concept of "*stabilization measures*". To this effect, GEO No. 99/2006 was supplemented by a new section "*Stabilization Measures*" (Articles 240^{23} through 240^{41}), whose

provisions are to be implemented in the case of credit institutions finding themselves in one of the situations provided under Article 240 of GEO No. 99/2006, and in the case when the voting rights of the shareholding controlling the credit institutions are suspended, and, in any of such situations, there is a threat to financial stability;

- The stabilization measures above are as follows: (i) full or partial transfer of assets and liabilities to one or several eligible credit institutions, (ii) involvement of the Bank Deposit Guarantee Fund (the "**Fund**"), as managing director or shareholder, as the case may be, if the measure of suspending the voting rights of the shareholding controlling such credit institutions was previously ordered, and (iii) the transfer of assets and liabilities to a bridge bank established to this effect. The enforcement of all such measures is provided in detail by the provisions of this new section, inserted by GO No. 1/2012;
- According to the new regulation, the National Bank of Romania (NBR) is the institution competent in deciding the implementation of a stabilization measure. As of NBR's decision on adopting such measure, the duties to administer and manage the credit institutions shall be taken over by the managing director (as appointed by NBR). Moreover, as to stabilization measures' financing, it is provided that such financing shall be secured by the Fund.

In consideration of the amendments brought by GO No. 1/2012 to the provisions of GEO No. 99/2006 (particularly with respect to the insertion of the section on the stabilization measures), the provisions of GO No. 39/1996 were accordingly amended. The following aspects were referred to:

- It is provided that the Fund (i) may hold the capacity as managing director/shareholder, as the case may be, in a credit institution where a stabilization measure was ordered by NBR, and (ii) may be a sole shareholder and may exercise the duties of the bridge banks' supervisory board;
- Special rules are provided for the special cases when the Fund finances the stabilization measures ordered by NBR;
- New powers are given to the Fund's Board of Directors, in consideration of its possibility to participate in the stabilization measures ordered by NBR;

- A new chapter named "*Fund's activity related to the capacities held throughout the implementation of stabilization measures*" was inserted; according to this chapter, the Fund has the obligation to carry out all the operations required for the incorporation and operation of the bridge bank according to NBR's decision, and for the exercise of the capacity as managing director/shareholder of a credit institution. Under such circumstances, the representatives of the Fund shall submit the documentation required for registering the bridge bank with the National Office of the Trade Registry immediately.

Also, in accordance with Article III of GO No. 1/2012, the term "*special indemnification fund*" is replaced by "bank restructuring fund" in the wording of GEO No. 99/2006 and GO No. 39/1996.

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Taxation

1 Amendments to the Fiscal Procedure Code

Name of enactment	Government Ordinance No. 2/2012 amending and supplementing Government Ordinance No. 92/2003 on the Fiscal Procedure Code ("**GO No. 2/2012**")
Publication	Official Gazette of Romania, Part I, No. 71 of 30 January 2012
Entry into force	2 February 2012, except for Article I item 13 (Title VII[1] "Administrative Cooperation in Taxation related Matters") which shall come into force on 1 January 2013
Connections with other enactments	Government Ordinance No. 92/2003 on the Fiscal Procedure Code ("**Fiscal Procedure Code**")
Connections with EU legislation	Directive 2011/16/EU of the Council on administrative cooperation in the field of taxation ("**Directive 2011/16/EU**")
Main provisions	The main goal of GO No. 2/2012 is to transpose Directive 2011/16/EU. Thus, a new title was inserted in the Fiscal Procedure Code, *i.e.* Title VII[1] which regulates the procedures and norms to be used between Romania and the other EU Member States with a view to exchanging relevant information in terms of the internal laws of the Member States in matters of duties and taxes. The information exchange shall concern neither the value-added tax, excise duties and the custom duties which are subject to the EU special laws, nor the mandatory contributions to social security systems. As to Romania, the competent authority in this field is the National Agency for Fiscal Administration.

In general terms, cooperation between Member States may be performed by means of information exchange upon request, systematic communication of relevant information at regular intervals decide in advance, without a prior request to this end (automatic exchange) or by means of non-systematic communication, at any time, without a prior request (spontaneous exchange). The Fiscal Procedure Code regulates the conditions, scope of application and terms for each sort of information exchange: upon request, automatic or spontaneous. All information exchanges performed by virtue of this title shall observe the provisions of Law No. 677/2001 on the protection of persons with respect to the personal data processing.

Other relevant amendments to the Fiscal Procedure Code brought by GO No. 2/2012 are as follows:

- When agreeing to a price advance, it was stated that the date to be considered upon by future transactions between affiliates shall be the date of submission by the payer of the application requesting the issuance of an advance price agreement;
- GO No. 2/2012 regulates the procedure of collaboration between the tax authority and taxpayer with a view to issuing an anticipated individual tax solution or an advance price agreement. Consequently, the tax authority shall have to provide the taxpayer with the anticipated tax solution project or advance price agreement project underlying the decision, to enable the latter to express a standpoint. The taxpayer shall be given a 60-business-day term to submit the clarifications requested by the tax authority or to express the standpoint in relation to the endorsed project;
- GO No. 2/2012 regulates the amicable procedure in case of conventions for the avoidance/elimination of double taxation, setting out that a Romanian taxpayer whose income fall under the scope of a convention for the avoidance of double taxation and consider that the taxation is not compliant with the provisions thereof, may initiate the amicable procedure by submitting an application to the National Agency for Fiscal Administration to this end. As to the elimination of double taxation between Romanian affiliates, the Fiscal Procedure Code provides a special adjustment procedure for the relevant tax authorities;
- GO No. 2/2012 inserts the possibility to request the tax certificate to the

persons holding shares in a business company, with a view to learning the company's financial status;

- GO No. 2/2012 sets out that the annual profit tax statement for 2011 shall be submitted by all taxpayers until 25 March 2012, except for non-profit associations and taxpayers obtaining most of the income from growing cereals and plants for industrial use, fruit farming and grape growing, which submit the annual corporate tax return for 2011 until 25 February 2012.

2 Amendments to the Methodological Norms of the Fiscal Code

Name of enactment	Government Decision No. 50/2012 amending and supplementing the Methodological Norms for implementing Law No. 571/2003 on the Fiscal Code, approved by Government Decision No. 44/2004 ("**GD No. 50/2012**")
Publication	Official Gazette of Romania, Part I, No. 78 of 31 January 2012
Entry into force	31 January 2012
Connections with other enactments	Law No. 571/2003 on the Fiscal Code (the "**Fiscal Code**")
Main provisions	GD No. 50/2012 was adopted further to the new changes of the Fiscal Code and brings a set of clarifications with respect to the income tax, value added tax, excise duties, local taxes and duties, and mandatory social contributions. As to the income tax, GD No. 50/2012 details on the following main aspects: • The inclusion of the forms of support granted for agriculture, obtained from the state budget and external non-repayable funds, in the category of non-taxable income obtained by individuals, and exemplification thereof; • Clarifications on non-taxable income obtained from the capitalization of movable assets by means of collection centres, with a view to dismembering them, which assets are subject to programs financed from the State budget or other public funds. The income obtained from the capitalization of wastes by means of waste collection centres, which is not subject to such national programs or public funds, is deemed as taxable income and falls within the category of "income from other sources", being subject to the 16% tax rate; • Clarifies the provisions of the Fiscal Code as regards the inclusion within the costs corresponding to delegation and secondment of

employees, of the costs granted for transport, lodging and the relevant indemnity.

As for the value added tax ("**VAT**"), GD No. 50/2012 brings:

- Clarifications concerning the extension of the category of taxable persons which may constitute a tax group in respect of VAT. It is provided that the group may be constituted between taxable persons that are managed by the same relevant tax body, unlike the former provisions which only permitted large tax payers to constitute into a sole tax group. The persons constituted into a sole tax group may submit a centralized VAT return through an authorized representative, without need for a separate VAT return to be submitted by each member of the tax group;
- New provisions on VAT exemptions in case of receivable assignment operations.

With regard to excise duties, GD No. 50/2012 details on the following:

- The minimum amount of the subscribed and paid in share capital for production tax warehouses, as well as the minimum amount of the related security;
- The procedure to be fulfilled by undertakings for the return of the excise duties related to the excisable products released for consumption in Romania, which are subsequently exported.

As to the local taxes and duties, GD No. 50/2012:

- Exemplifies the manner of establishing tax rates in respect of buildings owned by legal entities which did not perform the re-assessment procedure.
- Provides a list of the buildings deemed as tourist attractions in view of taxation and brings certain clarifications as to the manner of declaring such buildings which do not operate throughout a fiscal year.
- Explains the manner of computation of tourist taxes, so that the 1% rate should be applied to the total value of lodging/ lodging fee for each day of vacation of the tourist, which value is VAT excluded.

Regarding the mandatory social contributions, GD No. 50/2012:

- Details on the income included in the computation base of social

contributions by reference to the new terminology used in the Fiscal Code;

- Clarifies and lists all types of income exempted from payment of the contribution due by the employee/employer, and which are not to be included in the computation base.

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Motor Vehicles Pollutant Emissions Tax

Name of enactment	Law No. 9/2012 concerning pollutant emissions from motor vehicles ("**Law No. 9/2012**")
Publication	Official Gazette of Romania, Part I, No. 17 of 10 January 2012
Entry into force	13 January 2012
Connections with other enactments	• Government Decision No. 9/2012 on the approval of Methodological Norms for implementing Law No. 9/2012 concerning the tax on pollutant emissions from motor vehicles ("Methodological Norms"); • Order of the National Agency for Fiscal Administration No. 28/2012 on the approval of the procedure setting out the tax for pollutant emissions from motor vehicles ("Order No. 28/2012"); • Common order of the Ministry of Environment and Forests No. 62/2012 and of the Ministry of Public Finance No. 85/2012 on the approval of the reimbursement procedure in relation to the amounts provided at Article 7, Article 9 and Article 12 of Law No. 9/2012, and to the amounts set out by the court, by final and irrevocable ruling ("Common Order"); • Government Emergency Ordinance No. 1/2012 for suspending the application of certain provisions under Law No. 9/2012 concerning the pollutant emissions tax, as well as the reimbursement of the tax paid pursuant to the provisions under Article 4 (2) of the law ("GEO No. 1/2012").
Main provisions	The necessity to enact the legislative package contemplated herein occurred against the background of the censorship applied by the Court of Justice of the European Union ("**CJEU**") as regards pollution tax for motor vehicles, regulated under Government Emergency Ordinance No. 50/2008 setting out vehicle pollution tax, as approved under Law No. 140/2011 ("**GEO No. 50/2008**"). CJEU

deemed that such tax interferes with Article 110 of the Treaty on the Functioning of the European Union ("**TFEU**") because it discriminates indirectly, thus discouraging vehicle imports in Romania. To avoid a potential infringement procedure triggered by the European Commission, a set of laws meant to harmonize national laws with the related EU norms was enforced in this respect.

The main enactment enforced to this effect is Law No. 9/2012 repealing and replacing GEO No. 50/2008.

Please find below a summary of the most important provisions of Law No. 9/2012, with references to the related regulations:

Regulating the operations subject to such tax:

- Registration with the competent authority's records of the acquired ownership right over a vehicle, by such vehicle's first Romanian owner;
- Re-commissioning of a vehicles after the termination of exemption provided under Law No. 9/2012;
- Re-entry of a vehicle into the national car fleet, in case that the paying owner was reimbursed for the residual value of the tax at the time when such vehicle was removed from the national car fleet;
- The first transcription of the property right in Romania in relation to a second-hand vehicle, if the following conditions are fulfilled: (i) the special tax for motor vehicles and passenger cars pursuant to the provisions under Articles 214^1 - 214^3 of Law No. 571/2003 on the Fiscal Code (for vehicles registered between 01 January 2007- 30 June 2008) or the pollution tax for motor vehicles pursuant to the provisions under GEO No. 50/2008 (for vehicles registered as of 01 July 2008 and until the entry into force of Law No. 9/2012) were not paid; and *(ii)* the vehicle does not belong to the category of motor vehicles exempt from the special tax for motor vehicles and passenger cars, or from pollution tax for vehicles, pursuant to the legal regulations in force on the vehicle's registration date in Romania.

Note should be made that the implementation of Law No. 9/2012 defining and classifying the latter operation as being subject to such tax [*i.e.* Article 2 letter i) and Article 4 (2)], as well as the provisions regulating the calculation mechanism of the tax owed for such operation [*i.e.* Article 5 (1)], was suspended between 31 October 2012 – 01 January 2013 under GEO No. 1/2012. The tax paid to this effect

between the date of entry into force of Law No. 9/2012 and the date of entry into force of GEO No. 1/2012 may be reimbursed pursuant to the provisions in Government Ordinance No. 92/2003 on the Fiscal Procedure Code.

As regards vehicles in relation to which the first transcription of the ownership right is required, registered subsequent to 01 January 2007, for which: *(i)* the special tax for motor vehicles and passenger cars/vehicle pollution tax was paid, *(ii)* the paying owners were not reimbursed for the paid amount or for the residual value, as provided by law, the Methodological Norms set out that the competent tax authority shall issue a document to confirm same. The actual procedure pursuant to which said document is to be issued is detailed in Chapter III of the Common Order (*Drafting and Issuance Procedure of the document provided at Article 4 (1) of Government Decision No. 9/2012*).

Provisions regarding the taxation method:

- The tax is calculated based on objective criteria (pollution norm, CO_2 emissions, cylindrical capacity, engine type) taking into account the depreciation of the vehicle, pursuant to the coefficients mentioned in the Methodological Norms;
- Unitary tax calculation method, irrespective of the origin of vehicles for which one of the operations regulated under Law No. 9/2012 is required, and notwithstanding the time when the tax is paid, *i.e.* upon the first registration in Romania, or the date of the first transcription of ownership right over vehicles transferred subsequent to the entry into force of Law No. 9/2012.

The actual motor vehicle-related tax to be paid shall be calculated in observance of the procedural provisions set out in the Methodological Norms and in Order No. 28/2012.

Legal possibilities related to the recovery of tax differences arising further to the implementation of the new provisions:

- Returning the residual value of paid tax (*i.e.* vehicle pollution tax/vehicle pollutant emission tax) in case the vehicle is removed from the national vehicle fleet;
- Returning the difference between the value of the pollutant emission tax, calculated pursuant to the new provisions and the value of the special tax for motor vehicles and passenger cars/pollution tax for

motor vehicles;

- Returning the tax balance resulting from challenging the tax.

The amounts arising from any of the three legal options shall be reimbursed based on the procedures detailed in the Methodological Norms and the Common Order.

Repealed enactments

- Government Emergency Ordinance No. 50/2008 setting out the vehicle pollution tax;
- Government Decision No. 686/2008 on the approval of the methodological norms to approve Government Emergency Ordinance No. 50/2008 setting out the vehicle pollution tax.

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Case Law on Motor Vehicles Pollutant Emissions Tax

Decision

Decision of the High Court of Cassation and Justice No. 24/2011 on the final appeal in the interest of law subject to the file No. 9/2011

Publication

Official Gazette of Romania, Part I, No. 1 of 03 January 2012

Connections with legal enactments

- Government Emergency Ordinance No. 50/2008 on implementing the pollution tax for motor vehicles repealed by Law No. 9/2012 concerning vehicle pollutant emissions ("**GEO No. 50/2008**");
- Government Ordinance No. 92/2003 on the Fiscal Procedure Code ("**FPC**").

Main provisions

The High Court of Cassation and Justice ("**HCCJ**") sustained by Decision No. 24/2011 the final appeal in the interest of law filed by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice due to the non-unitary case law of the national courts with respect to the following two issues: *(i)* the possibility to compel the Prefect's Office to register a motor vehicle without a prior assessment from the relevant tax authority in the sense that the pollution tax is or is not due, by reference to the combined implementation of Article 4, Article 7 and Article 10 of GEO No. 50/2008 by reference to Article 7 (2) of Administrative Contentious Law No. 554/2004 and *(ii)* admissibility or inadmissibility of the motion for repayment of the pollution tax when the claimant fails to provide evidence attesting the fulfillment of the preliminary procedure provided under Article 7 of GEO No. 50/2008.

HCCJ analyzed the final appeal in the interest of law, first of all from the standpoint of the recent case law of the Court of Justice of the European Union ("**CJEU**") on the lawfulness of the pollution tax regulated under GEO No. 58/2000. To this effect, upon settling Cases Nos. C-402/09 Ioan Tatu v. Romania ("**Tatu Case**") and C-263/10, Iulian Nisipeanu v. D.G.F.P. Gorj and others ("**Nisipeanu Case**") CJEU considered that such pollution tax is against the provisions of Article 110 of the Treaty on the functioning of the European Union ("**TFEU**") which prohibits discriminatory domestic taxes for imported goods. This is because GEO No. 50/2008 imposes certain taxation requirements for the second-hand motor vehicles bought from other Member States and characterized by major wear and years in service, without regulating such requirements for similar vehicles sold on the domestic market of second-hand motor vehicles.

In addition, taking into account the principle of applying EU law with priority over domestic law of the Member States and the scope of the subjects bound to observe EU law (*i.e.* nationals of Member States and State authorities and, thus, the Prefect's Office), the requirement imposed by the Prefect's Office on the person requesting registration in Romania of a motor vehicle bought from another Member State to provide, among other documents, evidence attesting the payment of the pollution tax, is contrary to the EU rules. Also, taking into consideration CJEU's standpoint on the lawfulness of the pollution tax, no preliminary assessment by the relevant tax authority on whether such tax is due or not is required.

Considering the retroactive effect of CJEU's preliminary decisions and the fact that no limitation in time of the effects of the preliminary decision was sought in the Tatu Case, and such request was dismissed in the Nisipeanu Case, the State of Romania shall have to repay the pollution taxes collected in breach of the European law and, correlatively, taxpayers shall be entitled to be repaid such taxes.

In accordance with the principle of procedural autonomy, the rules for repayment shall be the rules laid down in the domestic law.

In practice, taxpayers that requested repayment of the pollution taxes unlawfully charged by the Romanian State resorted to the procedure provided under Article 117 letter d) of the Fiscal Procedural Code *i.e.* repayment of the amounts paid due to incorrect implementation of the legal provisions. In clarifying this issue, HCCJ had to choose between the admissibility of a direct use of such method, on one hand, or the conditioning of the repayment of the taxes unlawfully charged by a

prior fulfillment of the procedure regulated under Article 7 of GEO No. 50/2008 by reference to Articles. 205 through 218 of the Fiscal Procedure Code regulating the settlement of challenges against administrative tax documents, on the other hand.

To this effect, HCCJ established that the challenging procedure provided under Article 7 of GEO No. 50/2008 by reference to Articles 205 through 218 of the Fiscal Procedure Code shall not apply to requests for repayment of the pollution tax grounded on the provisions of Article 117 (1) letter d) of the Fiscal Procedure Code, such two procedures being distinctly regulated. Admitting to the contrary would deprive the last provision of its legal effects, for no longer having any logical justification.

As a matter of fact, CJEU case law provides to this effect as well. In settling the Cases Metallgesellschaft Ltd. and others (C-397/98), Hoechst AG and Hoechst (UK) Ltd. (C-410/98) v. Commissioners of Inland Revenue and HM Attorney General, CJEU held that the repayment of the unlawfully charged taxes may not be conditional upon the challenging of the national regulation or tax documents as of the time of payment.

Consequently, HCCJ sustained the final appeal in the interest of law and concluded that: (i) submitting motions seeking to compel the Prefect's Office via the specialty department, to register second-hand motor vehicles bought from another EU Member State without payment of the pollution tax provided under GEO No. 50/2008 and without going through the procedure of challenging the tax obligation provided under Article 7 of the same ordinance is admissible and (ii) the challenging procedure provided under Article 7 of GEO No. 50/2008, by reference to Articles 205 through 218 of the Fiscal Procedural Code no longer applies to motions for repayment of the pollution tax grounded on Article 117 1 letter d) of the same legal enactment.

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