

Legal Bulletin

August 2012

Banking	1
Civil Procedure	1
Corporate and Commercial	2
Labour Law	3
Taxation	4

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Banking

Name of the enactment	Government Ordinance No. 12/2012 for the amendment and supplementation of Government Ordinance No. 10/2004 on the bankruptcy of credit institutions (“ GO No. 12/2012 ”)
Publication	Official Gazette of Romania, Part I, No. 593 of 20 August 2012
Entry into force	23 August 2012
Connections with other enactments	Government Ordinance No. 10/2004 on the bankruptcy of credit institutions (“ GO No. 10/2004 ”)
Main provisions	GO No. 12/2012 brings amendments and supplementations to GO No. 10/2004 as regards the order in which the receivables are to be paid, if the credit institution goes bankrupt. Thus, it eliminates the legal subordination of the receivables arising from the loans granted to the credit institution by a shareholder owning at least 10% of the share capital. The order of priority to the payment of receivables further includes the receivables arising from debt instruments and loans, relying on conventions which provide for a subordination clause according to which, in case of winding-up or bankruptcy of the credit institution, such receivables are to be paid after the receivables of all unsubordinated unsecured creditors and, as the case may be, other subordinated unsecured creditors. Within this category, the receivables shall be paid in accordance with the order of preference determined in the subordination clause for each receivable.

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Civil Procedure

Name of the enactment	Government Emergency Ordinance No. 44/2012 on the amendment of article 81 of Law No. 76/2012 for the application of Law No. 134/2010 on the Civil Procedure Code (“ GEO No. 44/2012 ”)
Publication	Official Gazette of Romania, Part I, No. 606 of 23 August 2012
Entry into force	23 August 2012
Connections with other enactments	<ul style="list-style-type: none"> • Law No. 76/2012 for the application of Law No. 134/2010 on the Civil Procedure Code (“Law No. 76/2012”); • Law No. 134/2010 on the Civil Procedure Code (the “New Civil Procedure”)

Code”).

Main provisions

GEO No. 44/2012 postpones the date when the New Civil Procedure Code comes into force for **1 February 2013**. The provision regulating the application as of 1 January 2013 of the amendments brought to the New Civil Procedure Code by Law No. 76/2012 was also repealed.

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Corporate and Commercial

1 New provisions regulating tax and budgetary measures

Name of the enactment

Government Ordinance No. 17/2012 regulating tax and budgetary measures (“**GO No. 17/2012**”)

Publication

Official Gazette of Romania, Part I, No. 611 of 24 August 2012

Entry into force

27 August 2012, except for the provisions under article 16, which will become effective within 30 days as of the publication date of GO No. 17/2012 in the Official Gazette of Romania

Connections with other enactments

- Law No. 95/2006 on healthcare reform (“**Law No. 95/2006**”);
- Government Emergency Ordinance No. 77/2011 on establishing a contribution for financing certain healthcare expenses (“**GEO No. 77/2011**”);
- Government Emergency Ordinance No. 77/2009 on the organization and operation of gambling activities (“**GEO No. 77/2009**”).

Main provisions

GO No. 17/2012 comprises inter alia regulations on the following matters:

- Quarterly contribution provided by Law No. 95/2006 and GEO No. 77/2011;
- Monitoring expenses pertaining to all public hospitals;
- Imposing a ban on certain gambling activities.

The marketing license holders who owe the contribution provided under article 363¹ of Law No. 95/2006 for the period comprised between the fourth quarter of 2009 and the second quarter of 2011 shall benefit from the annulment of the related delay penalties. In order to benefit from such facility, the contribution must be paid in full within 30 days as of the entry into force of GO No. 17/2012, while the interests owed for the principal obligations must be paid within the terms set forth pursuant to the Fiscal Procedure Code. The quarterly contribution shall be calculated according to the formula provided at article 3 of GEO No.

77/2011, with the value added tax eliminated both from the overall quarterly consumption and from the quarterly approved budget. The holders of medicinal products marketing licenses must file with the National House of Health Insurance by the 15th day of the month following the end of the quarter for which the contribution is payable, an updated list of the medicinal products for which the quarterly contribution is payable.

All public hospitals must submit monthly to the Ministry of Health a report on the drafting of the revenues and expenses budget of public hospitals, endorsed by the main credit authorization officer. Submitting incorrect data and failing to observe the legal deadlines shall be deemed as misdemeanours and shall be sanctioned by fines ranging from RON 2,000 to RON 5,000. The provisions under GEO No. 77/2009 regulating gambling activities, such as bingo, organized via television network systems are repealed. In the light of such measure, it is expressly prohibited to sell cards/tickets for gambling activities such as bingo, for which prizes are announced or participants are awarded prizes via television or radio networks.

2 Suspension of the law on the registration of commercial operations by electronic means

Name of the enactment	Government Ordinance No. 21/2012 suspending the application of Law No. 148/2012 on the registration of commercial operations by electronic means (" GO No. 21/2012 ")
Publication	Official Gazette of Romania, Part I, No. 623 of 30 August 2012
Entry into force	2 September 2012
Connections with other enactments	Law No. 148/2012 on the registration of commercial operations by electronic means (" Law No. 148/2012 ")
Main provisions	GO No. 21/2012 suspends the application of Law No. 148/2012 until 1 January 2013, to grant the undertakings which perform electronic issuance, transmission and archiving operations enough time to adapt the existing technical infrastructures to the new legal requirements provided by Law No. 148/2012.
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Labour Law

Name of the decision	Decision No. 680/2012 of the Constitutional Court, regarding the admission of the motion for unconstitutionality of the provisions under article 73 (1) of Law No. 263/2010 on the unitary public pensions system (" Decision No. 680/2012 ")
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Publication	Official Gazette of Romania, Part I, No. 566 of 9 August 2012
Connections with legal enactments	Law No. 263/2010 on the unitary public pensions system (" Law No. 263/2010 ")
Main provisions	<p>By Decision No. 680/2012, the Constitutional Court admitted the motion for unconstitutionality in relation to the phrase "by reference to age, pursuant to table No. 3" from article 73 (1) of Law No. 263/2010.</p> <p>In grounding its decision, the Court showed that the provisions of the aforementioned article, rendering the disability pension conditional upon a minimum contribution period, by reference to age, breaches the principle of contribution on which the entire public pensions system relies.</p> <p>Specifically, the Court upheld that the lawmaker's establishing of a standard retirement age and a minimum or full contribution period, as the case may be, is legitimate and constitutional, however as far as the disability pension is concerned, the reasons supporting the regulation of a standard retirement age or a minimum or full contribution period are no longer applicable. Furthermore, the Court showed that the loss of all or at least half of a person's capacity to work caused by a regular illness or by occupational accidents is a random event beyond the will of said party, so that setting out an age and a minimum contribution period for awarding the disability pension is not justified. Under these circumstances, the Court deems that the lawmaker must seek to impose only such conditions envisaging strictly the contribution period already completed, and not the age of the insured, so that the latter should be able to benefit from disability pension according to the contribution made so far, irrespective of his age.</p> <p>Further to having decided in favour of the unconstitutionality of the aforementioned provisions under article 73 (1) of Law No. 263/2010, the lawmaker must harmonize the provisions found to be unconstitutional with the provisions of the Constitution, within 45 days as of the publication of Decision No. 680/2012 in the Official Gazette.</p>

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Taxation

1 Amendments to the Fiscal Code

Name of the enactment	Government Emergency Ordinance No. 15/2012 on the establishment of financial measures in the health insurance and public finance sectors (" GEO No. 15/2012 ")
Publication	Official Gazette of Romania, Part I, No. 621 of 29 August 2012

Entry into force	1 September 2012, except as mentioned below
Connection with other enactments	<ul style="list-style-type: none">• Law No. 571/2003 on the Fiscal Code (the “Fiscal Code”);• Government Decision No. 44/on the Fiscal Code (“GD No. 44/2004”).
Main provisions	<p>Profit Tax:</p> <ul style="list-style-type: none">• The fiscal loss of taxpayers that cease to exist as a result of a merger or de-merger shall be recovered by the newly registered entities or by the entities which take over the assets and liabilities of the absorbed or divided company pro rata to the assets and liabilities transferred to the beneficiaries, according to the merger/de-merger project;• The fiscal loss of taxpayers that do not cease to exist as a result of a split-up of a part of their assets and liabilities, transferred as a whole, is recovered by these taxpayers and by the ones which take over a part of the transferor’s assets and liabilities pro rata to the assets and liabilities transferred to the beneficiaries, according to the de-merger project, and pro rata to the assets not transferred by the transferor, respectively;• For mergers, de-merger and partial de-merger operations, transfers of assets and exchanges of shares among companies in different EU countries, if the transferor entity has a tax loss, this is recovered by the permanent establishment of the beneficiary company located in Romania.

These amendments will enter into force as of 1 October 2012.

Income Tax:

In this respect, only some clarifications are brought, as follows:

- For the income obtained from independent activities based on civil contracts/agreements concluded by taxpayers that carry out independent economic activities or liberal professions and are tax-registered according to the law, it is expressly provided that no withholding tax is applied. The same tax treatment is also applicable to the individuals who obtain income from the rental of property which is an asset of their business.

These amendments became effective on 1 September 2012.

Value-Added Tax:

- The cash accounting scheme is introduced, based on which VAT is collected when beneficiary's payment is collected. For taxpayers with a turnover below the threshold of RON 2,250,000, the application of the cash accounting scheme is mandatory;
- The cash accounting scheme is not applicable to the supply of goods/provision of services for which payment is collected in cash, in full or in part, by the taxpayer applying the cash accounting scheme. Also, the scheme is not applicable to:
 - Supply of goods/provision of services which are subject to the reverse charge mechanism;
 - Supply/provision of VAT-free goods/services;
 - Provision of operations which are subject to the special regimes stipulated by articles 152¹ to 152³ of the Fiscal Code;
 - Supply of goods/provision of services for which the beneficiary is an affiliate of the supplier/provider.
- The taxable person applying the cash accounting scheme starting with 1 January 2013 has the obligation to submit with the competent tax authorities, until 25 October 2012 inclusively, a notification stating that the turnover obtained from 1 October 2011 to 30 September 2012 inclusively does not exceed the threshold of RON 2,250,000. Further details will be provided in the Norms for the Application of the Fiscal Code;
- GEO No. 15/2012 states that the place of provision for long-term rental of vehicles, including leasing services, rendered to non-taxable persons, will be the place where the beneficiary is established, domiciled or has his/her usual residence.

These amendments will enter into force as of 1 January 2013.

Social security contributions:

- The persons insured with specific social security systems, other than the public pension system (lawyers and clerical system), owe social security contributions only to those specific social security systems;
- Also, GEO No. 15/2012 brings clarifications with regard to the

employees who have the obligation to submit statement D112 and to pay mandatory social security contributions, if they obtain salary from employers in third countries with which Romania has not concluded agreements or conventions in this respect or from non-resident employers in EU Member States who owe social security contributions in Romania.

These amendments became effective as of 1 September 2012.

2 Amendments to the Fiscal Procedure Code

Name of the enactment	Government Ordinance No. 16/2012 on amending and supplementing Government Ordinance No. 92/2003 on the Fiscal Procedure Code ("GO No. 16/2012")
Publication	Official Gazette of Romania, Part I, No. 618 of 28 August 2012
Entry into force	31 August 2012, except for the provisions on the extinguishing of receivables, which apply as of 1 November 2012
Connection with other enactments	Government Ordinance No. 92/2003 on the Fiscal Procedure Code (the "Fiscal Procedure Code")
Main provisions	<p>The most significant changes brought to the Fiscal Procedure Code by GO No. 16/2012 are the following:</p> <ul style="list-style-type: none">• GO No. 16/2012 introduces a new article in the Fiscal Procedure Code, <i>i.e.</i> Article 148¹, which regulates the case when the enforcement of obligations listed in a disputed tax administrative deed cannot commence or is suspended if a bank letter of guarantee is submitted by the taxpayer, up to the amount of the disputed tax liabilities;• Clarifications are brought regarding the submission of online tax statements. The date of submission by electronic means via the e-Romania portal is the date when the statement was registered on the portal. As an exception, if the tax statement was filed in due time, but not validated due to errors, the filing date is the date of the initial message.

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