

FISCAL AND ACCOUNTING NEWS 2010

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Abstract

By decree of the Minister of Public Finance no. 3055/2009 for the adoption of the accounting Regulations in compliance with the European directives (that abolish completely the provisions of the 1752/2005 Decree), a series of modifications/news were introduced in the field of accounting, as well as in the fiscal field. These regulations are applicable starting the 1st of January 2010.

The herewith material details the main accounting and fiscal news such as: news concerning the accounting procedures; news concerning the internal control, news concerning the companies' stock-taking; anticipated disbursement system for the profit tax applicable starting 2010 by all the contributors; the regularization of the profit tax owed for 2009; clarifications regarding the certification of the annual profit tax declaration for 2009; the new regulations for the elaboration and deposition of the recapitulative declaration, as well as other declaration obligations associated to the beginning of the new year; important accounting aspects referring to the patrimony stock-taking at the end of 2009.

Key-words: *accounting news, fiscal news, accounting procedures, company stock-taking, accounting policy manual, internal and financial accounting control, fiscal consultant*

JEL Classification: M₄₀, M₄₁

This material aims at systemizing the main news in the accounting field and fiscal fields emerged in the specialist literature from Romania, applicable starting 1st of January 2010. The literature is indicated in the Bibliography section.

1. Accounting news

The accounting regulations approved by Decree no. 3055/ 2009 bring a series of additional information and modifications regarding the general accounting principles, as well as the application of the economic prevalence principle over the judicial and the significance threshold principle by all entities, regardless of their size.

a. News regarding the accounting procedures

Among the modifications affecting the accounting procedures of the company we find the following:

- The liquid assets and other treasury values in currencies, as well as the receivables and debts in currency are reviewed at the end of every month,

according to the currency value communicated by the Romanian National Bank in the last banking day of the month;

- The commercial discounts given by the supplier and registered in the purchase bill adjust the purchase cost. On the other hand, the commercial discounts received subsequent to the invoicing are distinctly highlighted in accounting, in income or expenses accounts, regardless of the time period they refer to;

- The purchase cost of the stocks and shares on the short term admitted when transacting on a regulated market does not include the transaction costs directly attributed to the purchase. These are included in the purchase cost of the stocks and shares on the short term that are not admitted when transacting on a regulated market, as well as the cost of the long term ones;

- The insignificant errors pertaining to anterior financial exercises can be corrected using the loss and profit account;

- The corporal immobilizations and the purchased stocks for which the associated risks and benefits have been transferred, but that are being purchased are distinctly registered in accounting as “corporal immobilizations currently under purchase” or “stocks under purchase”.

b. *News regarding the internal control*

The new accounting regulations include provisions referring to the organization of the internal control and one major element is the **financial and accounting internal control**. Therefore, the companies must take into consideration, among other things, the elaboration of an accounting policy manual, the elaboration of an application procedure for this manual, controls that insure the manual compliance, specific controls of the sore points, the identification and treatment of the anomalies, the adaptation of the information programmes to the entity’s needs, the compliance with the accounting rules, the insurance of the exactness and exhaustiveness of the accounting registrations. The evaluation of the internal control starts, among others, with assuring the access to the system for the external control.

c. *News regarding the companies stock-taking*

On 4th November 2009, Decree no. 2861/2009 came into effect; it approved the norms regarding the organization and stock-taking of the elements such as assets, debts and own capital. Some of the modifications are:

- the number of the members is not limited anymore;
- in the case of the entities without employees who are in charge of the stock-taking, this is accomplished by the administrators;

- the accountants keeping the record of the inventoried stock-taking can participate to the stock-taking operations without being part of the commission, if stipulated as such in the internal procedures of the entities;

- the entities that have chosen a financial year different from the calendar year must organize the annual stock-taking so that its results are included in the financial situations elaborated for the financial exercise. For this purpose, they must take into account the information associated to the last day of the chosen financial exercise.

Generally, the modifications and completions brought by the accounting regulations approved by Decree 3055/2009 have the purpose of clarifying certain specific accounting treatments. Also, some concepts provisioned by the IASB General Framework are undertaken.

The modifications of the accounting regulations, as approved by Decree 3055/2009, are applicable for all the companies, lest the ones regulated/supervised by The National Bank of Romania, The Commission for Insurance Supervising, The Commission for Supervising the Private Pensions system and the National Commission of the stocks and shares.

Definitely, some modifications are relevant and will have a greater impact for the societies with a complex activity, regardless of the field they work in. Among these, we mention the application of the prevalence of the economic upon the judicial or the principle of the significance threshold.

The principle of the prevalence of the economic upon the judicial requests that the presentation of the values in the balance and the profit and loss accounts be made taking into consideration the economical background of the transaction or the reported operation and not only their judicial status. Application examples of this principle: the consignment, accreditation of the income and expenses in the profit account or as advance incomes, advance expenses. The application of the significance takes into consideration the possibility to combine certain elements in the balance or in the loss and profit account if these information are not significant for the insurance of a clear image of the financial situations or if such a combination offers a greater degree of clarity and the elements combined as such are presented separately in the explanatory notes.

Also, the implementation of the provisions referring to the organization of the internal control system and its documentation so that the compliance of the published financial and accounting information is insured will have a greater relevance for the companies with a complex activity. Nonetheless, these requirements are applicable to all the societies.

If we think of certain activity fields, the new accounting regulations include, among others, certain relevant clarifications for the companies developing/investing in real estate, for the societies that have signed concession agreements of the public-private type, for the companies that have programmes for the employee participation to profit or the ones offering shares of the company to the employees.

Clarifications regarding the manner to change a financial exercise different of the calendar year for the subsidiaries in Romania are still being awaited, for the cases when the foreign company has a financial exercise that is different from the calendar year and from the consolidated subsidiaries, when the parent company has a financial exercise that is different from the calendar year.

2. Anticipated payments for profits tax owed for 2010

In compliance with art. 34, a) and b) of Decree no. 571/2003 regarding the Fiscal Code, starting with 2010 all the contributors (except those who pay an annual profit tax) must apply the profit tax anticipated payment system, applicable

only to commercial banking companies, Romanian legal persons, and to the Romanian subsidiaries of the banks, foreign legal persons in the precedent years.

Thus, starting 2010, the contributors have the obligation to declare and to effectuate anticipated payments every trimester, in the account of the annual profit tax. The amount is a quarter of the profit tax owed for the precedent year, updated according to the inflation calculator (December, compared to last year's December), estimated with the occasion of the elaboration of the initial budget for the year for which the anticipated payments are made, until the 25th of the month following the trimester for which the payment is made.

The profit tax for the precedent year, based on which the anticipated payments are determined, is the profit tax owed for the precedent year in compliance with the declaration regarding the profit tax for that precedent year without taking into consideration the anticipated payments effectuated that year.

3. The regulation of the profit tax owed for 2009

In compliance with the provisions of art. 34, paragraph (10) and (11) of the Fiscal Code, the contributors, others than the commercial banking companies, Romanian legal persons and the Romanian subsidiaries of the banks, foreign legal persons, must declare and pay for the 4th trimester of 2009 an amount equal to the tax calculated for the 3rd trimester of the same fiscal exercise, the final payment of the profit tax for the fiscal year being due to be made until the due date for deposition of the declaration regarding the profit tax provisioned by art. 35, paragraph (1), until 25 April 2010.

By exception, the contributors who finish the closing of the anterior financial exercise by 25 February 2010 depose the annual profit tax declaration and pay the profit tax associated to the closed fiscal year until 25 February of the following year, without declaring profit tax to pay in the trimestrial declaration associated to the 4th semester of 2009. Consequently, the companies will analyse, until 25 January 2010, if the company can actually finish the profit tax calculation for 2009 until 25 February 2010.

4. The certification of the annual tax declaration by a fiscal consultant

According to the provisions of art. 83, paragraph (5) of Decree 92/ 2003 regarding the Fiscal Procedure Code, the annual fiscal declarations of the legal persons, contributors shall be certified by a fiscal consultant, lawfully, except for the ones for which audience is compulsory.

It seems that the provision applies to annual profit declarations code "101" with a deposition due date subsequent to 1 January 2010, therefore, to the annual profit tax declaration for 2009 as well. Also, the exception from the certification rule is not applicable to those contributors who, although they were not obliged to be financially audited, opted for audition.

5. The monthly deposition of the recapitulative declaration

According to the Fiscal Code, art. 156⁴ (as modified by OUG 109/2009), starting with 2010, the recapitulative declaration regarding the inter-community goods deliveries/purchases must be elaborated and deposited by any tax payer registered for VAT in compliance with art. 153 or art. 153¹ of the Fiscal Code, until the 15th of the following calendar month. In the recapitulative declarations the following shall be mentioned: the inter-community goods deliveries/purchases, according to the regulations enforced until 2010; the services purchases for which the tax place is in the member state of the beneficiary, starting 2010.

This category excludes the services exempt from VAT in the state member where these are taxable.

The recapitulative declaration will be elaborated for every month of the calendaristic year in which the liability of the tax for this type of operation appear.

6. Other procedural obligations for the beginning of 2010

– the issuance of the decision regarding the number from which the first bill is issued in 2010, in compliance with the provisions of Decree no. 2226/ 2007, addendum 4;

– the deposition, until 25 January 2010 inclusively, of a declaration obtained or if the case recalculated, as well as a note referring to the fact that there have been no inter-community goods purchases during the precedent year, if the entity had the obligation to deposit trimestrial VAT clearings for 2010 (Fiscal Code, art. 156.1 (6));

– the deposition, until 8 January (5 working days since the end of December 2009) of the deed of undertaking code “092” regarding the changing of the fiscal period for the VAT return, if in 2009 the company had the obligation to declare the VAT every trimester and had made at least one taxable intra-community purchase in December 2009 (Fiscal Code, art. 156¹, paragraph (6.1));

– the communication of the temporary pro-rate applicable for 2010 to the competent fiscal organ and its manner of calculation, by the taxable persons with a combined status, until 25 January 2010 (Fiscal Code, art. 147, paragraph (9));

– the deposition of the notifications mentioned at article 156.3, paragraph (5) and (6) until 25 February 2010;

– the solicitation from the non-resident beneficiaries of the income for which retention taxes in Romania are owed, the fiscal residency certificate issued by the competent authority in the residence state, valid for 2010, as well as the issuance of a affidavit that indicates the beneficiary status, in order to apply the double taxation avoidance agreements, with the purpose to apply the EU legislation (Fiscal Code, art. 118, paragraph (2), as it was modified by the Governmental decision 109/2009);

– the informative declaration deposition referring to the interest income payments made by natural persons resident in the member states of the European Union, until 28 February 2010 (Fiscal Code, art. 119). The annual declaration

concerning the retention tax on the non-residents income shall be deposited until June 30 2010;

– the deposition of the fiscal information referring to the calculation of the salary income tax, until February 28 2010 (Fiscal Code, art. 59.)

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