

Law no. 571 of 22 December 2003 regarding the Fiscal Code, as amended and completed

**Title I
General provisions**

**CHAPTER I
Purpose and scope of the Fiscal Code**

**ART. 1
Purpose and scope of the Fiscal Code**

(1) The present code is establishing the legal framework for taxes, duties, and compulsory social security contributions provided in Article 2, which are income to the state budget, local budgets, state social security budget, unique health insurance national fund budget, unemployment insurance budget and to guarantees for payment of salary claims fund, specifies the taxpayers liable to pay such taxes, duties, and social contributions and as well the manner for computing and paying such taxes and duties. The present code covers the procedure for modifying taxes, duties, and social contributions. Also, it authorizes the Ministry of Public Finance to draft methodological norms, instructions, and orders, for application of the present code and for application of the double taxation agreements.

(2) The legal framework for administration of taxes and duties governed by the present code shall be provided by the legislation regarding fiscal procedures.

(3) For fiscal matters, provisions of the present code shall prevail over any provisions from other laws. In case of conflicting provisions, provisions in the Fiscal Code shall apply.

(4) If any provision of the present code is contrary to a provision in a treaty to which Romania is a party, provisions in that treaty shall apply.

(5) Any measure having a fiscal nature and representing state aid shall be granted according to provisions of the Government Emergency Ordinance No 117/2006 on the national procedures in matters of state aid, as approved with amendments and completions by Law No 137/2007.

**ART. 2
Taxes, duties, and social contributions governed by the Fiscal Code**

(1) The taxes and duties governed by the present code are the following:

- a) the profit tax;
- b) the income tax;
- c) the tax on micro-enterprise's incomes;
- d) the tax on incomes derived from Romania by non-residents;
- e) the tax on representative offices;
- f) the value-added tax;
- g) the excise duties;
- h) the local taxes.

(2) Social contributions governed by the present code are the following

- a) social insurance contributions due to state social insurance budget
- b) health social insurance contributions due to the unique health insurance national fund budget
- c) sick leave and health social insurance indemnities contribution owed by the employer to the unique health insurance national fund budget;
- d) unemployment insurance contribution owed to the unemployment insurance budget
- e) insurance for work accidents and professional diseases owed by the employer to the state social insurance budget;
- f) contribution to the guarantees for payment of salary claims fund owed by individuals and legal persons acting as employers according to art. 4 from law no. 200/2006 regarding setting up and use of the guarantees for payment of salary claims fund, as amended.

CHAPTER II

Interpretation and amendment of the Fiscal Code

ART. 3

Principles of taxation

The taxes and duties governed by the present code are based on the following principles:

- a) the neutrality of the fiscal measures as regards various categories of investors and capitals, forms of ownership, by ensuring equal conditions for investors, for Romanian and foreign capital;
- b) certitude of taxation, by drafting clear legal norms, that do not lead to arbitrary interpretations, while deadlines, manner and payable amounts are clearly established for each payer, and such payers may follow and understand their fiscal burden and may determine the impact of their financial management decisions on their fiscal burden;
- c) fiscal equity at the level of individuals, by different taxation of incomes depending on the size of incomes;
- d) efficiency of taxation by providing long-term stability of provisions in the Fiscal Code, so that such provisions do not lead to unfavourable retroactive effects for individuals and legal persons, in comparison to the taxation in force on the date when they adopt major investment decisions.

ART. 4

Amendment and completion of Fiscal Code

(1) The present code shall be amended and completed only by law, promoted as a rule, 6 months before the date of its entry into force.

(2) Any amendment or completion to this code shall enter into force starting with the first day of the year following the year when it was adopted by law.

ART. 5

Methodological norms, instructions and orders

(1) The Ministry of Public Finance has the authority to develop the norms necessary for the consistent application of the present code.

(2) For purposes of the present code, norms are defined as methodological norms, instructions and orders.

(3) Methodological norms are approved by Government according to a decision and are published in Part I of the Official Gazette of Romania.

(4) Orders and instructions for the uniform application of this code are issued by the minister of public finance and are published in the Official Gazette of Romania, Part I. Orders and instructions referring to procedures for administration of taxes and duties governed by this code, payable to the consolidated general budget, are issued by the president of the National Tax Administration Agency and are published in the Official Gazette of Romania, Part I.

(5) Public institutions under Government subordination other than the Ministry of Public Finance may not draft and issue norms that relate to any provision of the present code, except as provided in the present code.

(6) On an annual basis, the Ministry of Public Finance collects and systematizes all norms in force related to provisions of the present code and makes this official collection available to other persons for publication.

ART. 6

Central Fiscal Commission establishment and operation

(1) The Ministry of Public Finance is setting up a Central Fiscal Commission that is responsible for developing decisions regarding consistent application of the present code.

(2) The rules for organization and operation of the Central Fiscal Commission are approved by order of the Minister of Public Finance.

(3) The Central Fiscal Commission is coordinated by the State Secretary in the Ministry of Public Finance in charge of fiscal policy and legislation.

(4) Decisions of the Central Fiscal Commission are approved by order of the Minister of Public Finance.

(5) *** Repealed

(6) *** Repealed

(7) *** Repealed

(8) *** Repealed

CHAPTER 3

Definitions

ART. 7

Definitions of common terms

(1) For purposes of the present code, except for Title VI, terms and expressions below have the following meaning:

1. activity - any activity carried out by a person for the purpose of deriving income;

2. dependent activity - any activity carried out by an individual within an employment relationship;

2.1 any activity may be reconsidered as dependent activity if fulfilling at least one of the following criteria:

a) the income beneficiary is in a subordination relationship with the payer of income respectively management of the payer of income, and observes the working conditions imposed by payer of income such as the tasks to be performed and the

way for their accomplishment, the place for carrying out the activity, working programme.

b) for carrying out the activity, the beneficiary of income uses exclusively the material basis of the income payer, respectively properly equipped spaces, special working or protection equipment, working tools or other similar and he is contributing with his physical force or his intellectual capacity and not with his own capital.

c) the payer of income bears the expenses incurred by the beneficiary of income when traveling for business purposes, such as per diem for travel in Romania or abroad and other expenses having a similar nature.

d) the payer of income bears the holiday paid leave and the indemnity for temporary incapacity of work on the account of the beneficiary of income.

2.2 In case of reconsideration of activity as dependent activity, the income tax and compulsory social contributions determined according to the law shall be recomputed and paid. The amounts shall be due solidarily by the payer of income and by the beneficiary of income. In this case rules for determination of the tax on salary income derived outside the primary job shall apply.

3. dependent activity at the primary job - any dependent activity carried out based on an individual labour agreement or to a special statute provided by law, declared by the employee to the employer as primary job. In case the activity is carried out for more employers, the employee shall declare to each employer the place where he considers that the primary job is carried out;

4. independent activity - any activity carried out on a regular basis by an individual other than a dependent activity;

5. association without legal personality - any association in participation, economic interest group, civil company or other entity that is not a separate taxable person for income tax and profit tax purposes, according to norms issued for the application of the law;

5¹. Central fiscal authority – Ministry of Public Finance, institution with the role to coordinate consistent application of provisions in the fiscal law;

6. competent fiscal authority- the tax authority within the Ministry of Public Finance and specialized services of the local public administration authority, depending on the case, with fiscal responsibilities;

7. finance leasing contract - any leasing contract fulfilling at least one of the following conditions:

a) risks and benefits of ownership rights over the leased good, are transferred to the user at the moment when the leasing contract produces effects;

b) the leasing contract specifically provides for transfer to the user of ownership rights over the leased good, at the moment when the contract expires;

c) the lessee has the option to buy the good at the moment when the contract expires, and the residual value expressed as percentage is less or equal to the difference between the maximum useful life and the period of the leasing contract, reported to the maximum useful life, expressed as percentage;

d) the leasing period exceeds 80% of the maximum useful life of the leased good. For purposes of this definition, the lease period includes any period for which the leasing contract may be extended;

e) total value of the lease installments, except for ancillary expenses, is greater or equal to the entry value of the good;

8. operational leasing contract - any leasing contract concluded between a lessor and lessee that transfers to the lessee the risks and benefits of the ownership right, except for the risk of selling the good at the residual value, and which does not fulfill

the conditions provided in para. 7 letters b) - e); the risk for selling the good at the residual value exists when the purchase option is not carried out at the beginning of the contract or when the leasing contract specifically provides for the restitution of the good at the moment when the contract expires;

9. commission - any payment in cash or in kind made to a broker, general commissioner agent or to other person assimilated to a broker or general commissioner agent, for intermediation services performed in connection with a commercial operation;

10. mandatory social contributions - any contributions that shall be paid in accordance with the legislation in force for the protection of unemployed persons, for health insurance or for social insurance;

11. fiscal credit - a decrease of the income tax or profit tax by the amount of the tax paid abroad, according to conventions for the avoidance of double taxation or as provided in the present code;

12. dividend - a distribution in cash or in kind made by a legal person to a participant in the legal person as a consequence of holding shares in that legal person, except for the following:

a) a distribution of additional shares that do not modify the ownership of shares percentage for any participant in the legal person;

b) a distribution made in connection with acquiring/redemption of its own shares by the legal person, that do not modify the ownership of shares percentage for the participants in that legal person;

c) a distribution in cash or in kind made in connection with the liquidation of a legal person;

d) a distribution in cash or in kind made on the occasion of a reduction of the share capital actually contributed by the participants.

e) a distribution of share premiums pro rated with the share for each of the participants.

It is considered a dividend from fiscal point of view and subject to the same fiscal regime as income from dividends:

- the amount paid by a legal person for goods and services acquired from a participant in the legal person, in excess over the market price for such goods and/or services if the amount was not subject to income tax or profit tax at the recipient.

- the amount paid by a legal person for goods and services rendered in the favour of a participant in the legal person, if the payment is made by the legal person for the personal benefit of the participant.

13. interest - any amount to be paid or received for the use of money, irrespective if the amount shall be paid or received following a debt, in connection with a deposit or in accordance with a financial leasing contract, an installments sale or any deferred payment sale;

13¹. royalties or connected rights – are original intellectual literary, artistic, or scientific works irrespective of the creative way, mode or form of expression, and independent of their value and destination derivative works created starting from one or more preexisting works, and connected royalties and sui - generis rights according to provisions in law no. 8/1996 regarding royalties and connected rights as amended and completed;

14. franchise - a trading system based on a continuous collaboration between individuals or legal persons, independent from financial point of view, by which a person called franchiser grants to another person called beneficiary, the right to exploit or the right to develop a business, a product, a technology or a service;

14¹. deferred profit tax – the payable/recoverable tax for future periods in connection with temporary taxable/deductible differences between accounting value of an asset or debt and its fiscal value;

15. know-how - any information regarding industrial, commercial or scientific experience that is necessary for production of a product or for application of an existing process and that is not permitted to be disclosed to other persons without the authorization of the person that supplied the information; to the extent that it is derived from experience the know-how represents everything that a producer may not know from a simple examination of the product and from a simple knowledge of technical progress;

16. fixed asset - any tangible asset that is held for being used for production or delivery of goods or for supply of services, for rentals by third parties, or for administrative purposes, if the asset has a normal useful life exceeding one year and has a value exceeding the limit provided by Government decision;

17. non-resident - any foreign legal person, any non-resident individual and any other foreign entities, including undertakings for collective investment in transferable securities, without legal personality, not registered in Romania according to the law;

18. non-profit organization - any association, foundation or federation established in Romania in accordance to the legislation in force, but only if incomes and assets of the association, foundation or federation are used for an activity of general, community or non-patrimonial interest;

19. participant - any person that is the owner of a participation title (share);

20. person - any individual or legal person;

21. affiliated persons - a person is affiliated with another person if the relationship between them is defined by at least one of the following cases:

a) an individual is affiliated with another individual if such person is spouse or relative up to the third degree, inclusive. Between affiliated persons, the price at which tangible or intangible goods are transferred or services are rendered is transfer price;

b) an individual is affiliated with a legal person if the individual owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% from the value/number of shares or from the voting rights in the legal person, or effectively controls the legal person;

c) a legal person is affiliated with another legal person if at least:

(i) the first legal person owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% of the value/number of shares or voting rights in the other legal person, or if controls the legal person;

(ii) the second legal person owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% from the value/number of shares or voting rights in the first legal person;

(iii) a third legal person owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% by the value/number of shares or voting rights both in the first and in the second legal person.

22. non-resident individual - any individual who is not a resident individual;

23. resident individual - any individual fulfilling at least one of the following conditions:

a) he/she is domiciled in Romania;

b) the person's center of vital interests is located in Romania;

c) he/she is present in Romania for a period or periods exceeding in total 183 days during any period of 12 consecutive months ending in the relevant calendar year;

d) he/she is a Romanian citizen working abroad as an official or an employee of Romania in a foreign state.

As an exception from provisions of letters a) - d), a resident individual would not include a foreign citizen with diplomatic or consular status in Romania, a foreign citizen official or employee of an international and intergovernmental organization registered in Romania, a foreign citizen official or employee of a foreign state in Romania and his family members;

24. Romanian legal person - any legal person incorporated according to Romanian legislation;

24¹ legal person incorporated according to European legislation - any legal person incorporated according to conditions and through mechanisms provided by European regulations;

25. foreign legal person - any legal person that is not a Romanian legal person and any legal person incorporated according to European legislation with headquarters outside Romania;

26. market price - the amount that an independent customer would pay to an independent supplier at the same time and in the same place for the same or similar good or service under fair competition conditions;

27. immovable property - any land, building or other construction erected or incorporated in land;

28. royalty - any amount to be paid in cash or in kind for the use of, or the right to use, any of the following:

a) a copyright of a literary, artistic or scientific work, including of films or tapes for radio or television broadcasts, and as well for carrying out audio or video recordings;

b) any patent, invention, innovation, license, trademark, trade name, franchise, drawing, design, model, plan, sketch, secret formula or production process, or software;

For purposes of the present law, a royalty does not include remuneration in cash or in kind paid for acquisition of software designed exclusively to operate such software, without changes other than those necessary to install, implement, store or use such software. Also, for purposes of the present law, a royalty does not include remuneration in cash or in kind paid for acquisition of the entire copyright of a computer program;

c) any transmission, including public transmissions, direct or indirect, by cable, satellite, optic fiber or other similar technologies;

d) any industrial, commercial or scientific equipment, any movable goods, means of transportation or containers;

e) any know-how;

f) name or image of any individual or other similar rights relating to an individual.

In addition, a royalty shall include any amount which must be paid in cash or in kind for the right to record or broadcast under any manner performances, shows, sports events or other similar activities;

29. resident - any Romanian legal person, any foreign legal person having the place of management in Romania, any legal person established according to the European regulations with registered head office in Romania, and any resident individual;

30. Romania - the territory of Romania, including its territorial waters and the air space above the territory and the territorial waters over which Romania exercises its sovereignty, and as well the contiguous area, the continental plateau, and exclusive economic area over which Romania exercises its sovereign rights and jurisdiction, according to its legislation and to international legal norms and principles;

31. participation title - any stock or other share in a general partnership, limited partnership, joint-stock company, limited partnership by shares, limited liability company, or in another legal person or in an open investment fund;

31¹. securities - any securities, participation titles to an open investment fund or other financial instrument qualified as such by the National Securities Commission including derivatives, and as well shares;

32. transfer - any sale, assignment or alienation of the property right, exchange of the property right for services or for another property right and as well transfer of the fiduciary patrimony during fiduciary operation according to the Civil Code.

33. fiscal value represents:

a) for assets and liabilities, other than those mentioned in letters b) and c) - the value of the registration in the patrimony, according to the accounting regulations;

b) for participation titles/securities - purchase value or contribution value, used for computation of gain or loss, within the meaning of income tax or profit tax;

c) for depreciable fixed assets and land - purchase price, production price or market value of the fixed assets obtained free of charge or contributed, used for computing the fiscal depreciation, depending on the case, on the date when they entered the taxpayer's patrimony. The fiscal value shall include the accounting revaluations carried out according to the law. In case there are carried out revaluations of the depreciable fixed assets that determine a decrease of their value below purchase price, production price or market value of the fixed assets obtained free of charge or constituted as contribution, depending on the case, the fiscal undepreciated value of the depreciable fixed assets shall be recalculated up to the level of the one established pursuant to the purchase price, the production price or the market value of the fixed assets obtained free of charge or constituted as contribution, depending on the case. In case of land revaluations resulting in a decrease of their value below purchase price or market value for those acquired free of charge or contributed in kind depending on the case, the fiscal value is purchase price or market value for those acquired free of charge or contributed in kind depending on the case.

d) for provisions and reserves - deductible value at the computation of the taxable profit.

34. For determination of fiscal value, taxpayers applying accounting rules in conformity with International Accounting Standards will take into consideration the following rules:

a) for intangible assets the fiscal value will include revaluations made according to accounting rules. In case of intangible assets revaluations resulting in a decrease of their value below the undepreciated value determined based on the patrimony registration value, the undepreciated value for intangible assets will be recomputed up to the level established based on the patrimony registration value

b) in case of changing to revaluation model based on cost, the fiscal value of assets and liabilities determined according to the rules provided at point 33, except for depreciable fixed assets and land, shall not include adjustment to inflation.

c) in case of changing from the revaluation model based on cost from the fiscal value of depreciable fixed assets and land shall be deducted revaluations made according to accounting rules and shall be included adjustment to inflation;

d) for immovable properties classified as real estate, the fiscal value is represented by purchase price, production price or by market value of the real estate acquired free of charge or contributed in kind at the entrance date in the taxpayers patrimony as used for computation of fiscal depreciation depending on the case. The fiscal value will include evaluations made according to accounting rulings. In case of real

estate revaluations resulting in a decrease of their value below undepreciated value established based on purchase/production price or market value for real estate acquired free of charge or contributed in kind, the undepreciated fiscal value for real estate shall be recomputed up to the level of the value as determined based on purchase/production cost or market value of the real estate depending on the case.

(2) Criteria determining if an activity carried out by an individual is a dependent or independent activity are provided in the norms.

ART. 8

Definition of the permanent establishment

(1) For purposes of the present code, a permanent establishment is a location through which the activity of a non-resident is wholly or partly carried out, either directly or through a dependent agent.

(2) A permanent office includes a place of management, branch, office, factory, shop, workshop, as well as a mine, oil or gas well, quarry or other place of extraction of natural resources and as well the place through which continues to be carried out an activity with the assets and liabilities of a Romanian legal person that entered in a reorganization process provided at art. 27¹.

(3) A permanent establishment includes a building site, a construction, assembly or installation project or supervisory activities related to them, only if the site, project, or activities last more than 6 months.

(4) By derogation from provisions of par. (1) - (3), a permanent establishment does not include the following:

a) use of a facility solely for the purpose of storage or display of products or goods belonging to a non-resident;

b) maintenance of a stock of products or goods belonging to a non-resident solely for the purpose of storage or display;

c) maintenance of a stock of products or goods belonging to a non-resident solely for the purpose of processing by another person;

d) sale of products or goods belonging to a non-resident that have been displayed during occasional fairs or exhibitions if the products or goods are sold no later than one month after the conclusion of the fair or exhibition;

e) maintenance of a fixed place of activity solely for the purpose of purchasing products or goods or collecting information for a non-resident;

f) maintenance of a fixed place of activity solely for the purpose of carrying out for a non-resident any activity of a preparatory or auxiliary nature;

g) maintenance of a fixed place of activity only for any combination of activities provided in lett. a) – f), provided that the entire activity carried out at such fixed place is of a preparatory or auxiliary nature.

(5) By derogation from provisions of par. (1) and (2), a non-resident is considered to have a permanent establishment in Romania with respect to activities which a person, other than an agent with independent status, undertakes on behalf of the non-resident if the person is acting in Romania on behalf of the non-resident and if one of the following conditions is satisfied:

a) the person is authorized and exercises in Romania the authority to conclude contracts on behalf of the non-resident, unless the activities in question are limited to those provided in par. (4) letter. a) - f);

b) the person maintains in Romania a stock of products or goods from which the person delivers products or goods on behalf of the non-resident.

(6) A non-resident is not considered to have a permanent establishment in Romania merely because it carries out activity in Romania through a broker, agent, general commissioner or any other intermediary agent with an independent status, provided that the activity is the ordinary activity of the agent according to the description in the constitutive documents. If the activities of such agent are carried out wholly or almost wholly on behalf of the non-resident and conditions exist between the non-resident and the agent in their commercial and financial relations which differ from those which would exist between independent persons, then the agent is not considered to be an agent with independent status. If activities of such agent are carried out wholly or almost wholly in the name of the non-resident and in the trading and financial relations between the non-resident and the agent are existing conditions different of those existing between independent persons, the agent is not considered an agent with an independent status.

(7) A non-resident is not considered to have a permanent establishment in Romania merely because it controls or is controlled by a resident or by a person that carries out an activity in Romania through a permanent establishment or otherwise.

(7¹) Romanian legal persons, Romanian individuals and as well permanent establishments in Romania belonging to foreign legal persons, beneficiaries of services having the nature of construction, assembly, supervisory, consultancy, technical assistance and any other activities redered by foreign legal persons or individuals on the territory of Romania have the obligation to register the contracts concluded with these partners to the competent tax authorities according the procedure established by order of the President of the National Tax Administration Agency. The contracts concluded for activities carried out outside Romanian territory shall not be registered according to present provisions. For determination of the permanent establishment in case of a construction site or project, assembly or installation project or supervisory activities related to them and of other similar activities it will be taken into consideration beginning date of the activity from the contracts concluded or any other information evidencing beginning of activity. The periods elapsed for carrying out associated contracts directly connected with the first contract that was executed will be added to the period consumed for carrying out the base contract.

(8) For purposes of the present code, the permanent establishment of an individual is considered to be a fixed base.

CHAPTER IV

Rules for general application

ART. 9

Currency for payment and for computation of taxes

(1) Taxes are paid using the national currency of Romania.

(2) Amounts specified on a tax declaration are expressed in the national currency of Romania.

(3) Amounts expressed in a foreign currency are converted into the national currency of Romania as follows:

a) in case of a person that carries out an activity in a foreign state and that maintains its accounting records for such activity in the currency of such foreign state, the taxable profit or the net income from independent activities and the tax paid to the foreign state are converted into the national currency of Romania by using an

average exchange rate for the period to which the taxable profit or net income relates;

b) in any other case, amounts are converted into the national currency of Romania by using the currency exchange rate on the date when amounts are received or paid or on any other date as provided in norms.

(4) For purposes of par. (3), the currency exchange rate used to convert amounts expressed in foreign currency into the national currency of Romania is the exchange rate communicated by the National Bank of Romania, except for the cases expressly provided in norms.

ART. 10

Incomes in kind

(1) For purposes of the present code, taxable incomes include incomes in cash and/or in kind.

(2) In case of income in kind, the amount of income is determined on the basis of the quantity and the market price for such goods or services.

ART. 11

Special provisions for application of Fiscal Code

(1) In determining the amount of tax for purposes of the present code, the fiscal authorities may disregard a transaction that does not have an economic purpose or may re-characterize the form of a transaction to reflect the economic substance of the transaction.

(1[^]1) Taxpayers deemed inactive according to art. 78[^]1 from Government Ordinance no 92/2003 regarding Fiscal Procedure Code republished as amended and completed, which carry out economic activities during inactivity period are liable to the obligations regarding payment of taxes provided by this law but will not benefit of the right to deduct the expenses and vat for the transactions made during that period.

(1[^]2) Beneficiaries acquiring goods and/or services from taxpayers after their registration as inactive in the Register for inactive/reactivated taxpayers according to art. 78[^]1 from Government Ordinance no 92/2003 regarding Fiscal Procedure Code republished as amended and completed, will not benefit of the right to deduct expenses and vat corresponding for those acquisitions except for acquisitions of goods made during the forced execution procedure.

(1[^]3) Taxpayers to whom vat registration was cancelled according to provisions in art. 153, para (9) letters b) – e) will not benefit of the right to deduct vat for the acquisitions made during that period but are liable to pay collected vat according to provisions in title IV for the taxable operations carried out during that period.

(1[^]4) Beneficiaries acquiring goods and/or services from taxpayers to whom vat registration was cancelled according to provisions in art. 153, para (9) letters b) – e) and which were registered in the taxable persons register whose vat registration according to provisions in art. 153 was cancelled, will not benefit of the right to deduct vat for those acquisitions except for acquisitions of goods made during forced execution procedure.

(2) In the case of a transaction between Romanian and non-residents affiliated persons, the fiscal authorities may adjust the amount of incomes or expenses of any person as necessary in order to reflect the market price for the goods or services

provided in the transaction. In determining the market price for transactions between affiliated persons, the most appropriate of the following methods is used:

- a) the comparable price method, by which the market price is determined based on prices paid to other persons that sell comparable goods or services to independent persons;
- b) the cost plus method, by which the market price is determined based on the costs of the good or service provided in the transaction, increased by an appropriate profit margin;
- c) the resale price method, by which the market price is determined based on the resale price of the good or service sold to an independent person, decreased by selling expenses and other expenses of the taxpayer and a profit margin;
- d) any other method recognized in the transfer pricing guidelines issued by the Organization for Economic Cooperation and Development.

ART. 12

Incomes derived from Romania

The following incomes are considered as derived from Romania, regardless whether the incomes are received in Romania or abroad, in the form of:

- a) incomes attributable to a permanent establishment in Romania;
- b) incomes from dependent activities carried out in Romania;
- c) dividends from a Romanian legal person;
- d) interest from a resident;
- e) interest from a non-resident that has a permanent establishment in Romania, if the interest is an expense of the permanent establishment;
- f) royalties from a resident;
- g) royalties from a non-resident that has a permanent establishment in Romania, if the royalty is an expense of the permanent establishment;
- h) incomes from immovable property located in Romania, including incomes from the exploitation of natural resources located in Romania, incomes from the use of immovable property located in Romania and incomes from the transfer of the right of ownership upon immovable property located in Romania;
- i) incomes from the transfer of participation titles as defined at art. 7 para (1) point 31, in a legal person, if it is a Romanian legal person or if the majority of the value of the fixed assets of the legal person, either directly or through one or more legal persons, are immovable property located in Romania and as well incomes from transfer of securities as defined at art. 65, para (1), letter c) issued by Romanian residents;
- j) incomes from pensions received from the social insurance budget or from the state budget;
- k) incomes from services rendered in Romania, exclusively from international transport and supply of services related to this transport;
- l) incomes from rendering of management or consulting services in any field, if the incomes are obtained from a resident or if such incomes are expenses of a permanent establishment in Romania;
- m) incomes representing remuneration received by non-residents acting in the capacity of an administrator, founder or member of the administrative board of a Romanian legal person;
- n) commissions from a resident;
- o) commissions from a non-resident that has a permanent establishment in Romania, if the commission is an expense of the permanent establishment;

- p) incomes from sporting or entertainment activities carried out in Romania, regardless whether the incomes are received by the person that actually participates in such activity or by another person;
- q) *** Repealed
- r) incomes from prizes granted at contests organized in Romania;
- s) incomes obtained from gambling in Romania;
- t) any other incomes obtained from an activity carried out in Romania;
- ț) incomes from the liquidation of a Romanian legal person.
- u) income derived from transfer of patrimony from the fiduciary to the non-resident beneficiary during a fiduciary operation

ART. 12¹

Special provisions regarding exchange of information with the member states of the European Union

The Minister of Public Finance shall establish by an order the measures necessary to implement the administrative cooperation system and the exchange of information with the member states of the European Union in the field of value-added tax, excises and income tax.

TITLE II

Profit tax

CHAPTER I

General provisions

Article 13

Taxpayers

The following persons, hereinafter referred to as “taxpayers”, are required to pay profit tax according to the present Title:

- a) Romanian legal persons;
- b) foreign legal persons performing an activity through a permanent establishment in Romania;
- c) foreign legal persons and non-resident individuals performing an activity in Romania through an association with or without legal personality;
- d) foreign legal persons obtaining income from or in connection with immovable property located in Romania or from the sale/assignment of shares held in a Romanian legal person;
- e) resident individuals associated with Romanian legal persons, for the income obtained both in Romania and abroad, from associations without legal personality; in this case, the tax that is due by the individual shall be calculated, withheld and paid by the Romanian legal person;
- f) legal persons with the registered office in Romania, established according to the European legislation.

Article 14

Scope of the tax

The profit tax shall be applied as follows:

- a) for Romanian legal persons and legal persons with the registered office in Romania, established according to the European legislation, to the taxable profit obtained from any source, both from Romania and from abroad;
- b) for foreign legal persons performing an activity through a permanent establishment in Romania, to the taxable profit attributable to the permanent establishment;
- c) for foreign legal persons and non-resident individuals performing an activity in Romania through an association with or without legal personality, to the part of the taxable profit of the association attributable to each person;
- d) for foreign legal persons obtaining income from or in connection with immovable property located in Romania or from the sale/assignment of shares held in a Romanian legal person, to the taxable profit related to that income;
- e) for resident individuals associated with Romanian legal persons obtaining income both from Romania and from abroad, from associations without legal personality, to the part of the taxable profit of the association attributable to the resident individual.

Article 15

Exemptions

(1) The following taxpayers shall be exempted from the payment of the profit tax:

- a) the State Treasury;

b) public institutions, for public funds, including own revenues and available amounts obtained and used according to the Law no. 500/2002 on public finance, as subsequently amended, and Law no. 273/2006 on local public finance, as subsequently amended and completed, unless otherwise provided by the law;

b¹) Romanian legal persons paying an income tax on micro-enterprises, in accordance with the provisions of Title IV¹;

c) *** Repealed

d) Romanian foundations established as a result of a legacy;

e) *** Repealed

f) religious cults, for: income obtained from the manufacturing and sale of objects and products necessary for the religious activity, according to the law, rental income, other income obtained from economic activities, income from compensation in cash obtained as a result of the remedies provided by the laws on the restoration of property rights, provided that those amounts are used during the current year and/or the following years for the maintenance and operation of the worship units, for construction, repair and consolidation works performed on worship houses and ecclesiastical buildings, for education, for the rendering of social services accredited under the law on their own account and/or in a partnership, for specific actions and other non-profitable activities performed by the religious cults, according to the Law no. 489/2006 on the freedom of religion and the general status of denominations;

g) accredited private educational institutions, as well as the authorized ones, for the income used during the current year or the following years, according to the Law no. 84/1995 on education, republished, as subsequently amended and completed, and the Government Emergency Ordinance no. 174/2001 on certain measures for the improvement of higher education financing, as subsequently amended;

h) owners associations established as legal persons and tenants associations recognized as owners associations, according to the Dwellings Law no. 114/1996, republished, as subsequently amended and completed, for the income obtained from economic activities, which are used or will be used for the improvement of the facilities and the building efficiency, for the maintenance and repair of the joint property;

i) the Bank Deposit Guarantee Fund, established according to the law;

j) the Investors Compensation Fund, established according to the law;

k) the National Bank of Romania;

l) the Private Pension Guarantee Fund, established according to the law.

(2) The non-profit organizations, trade unions and employers' organizations shall be exempted from the payment of the profit tax for the following types of income:

a) contributions and registration fees of their members;

b) contributions in cash or in kind of their members and supporters;

c) registration fees determined in accordance with the legislation in force;

d) income obtained from sports visas, taxes and penalties or from the participation in sporting competitions and demonstrations;

e) donations and money or goods received as sponsorship;

f) dividends and interest obtained from the investment of the available amounts resulted from the exempted income;

g) income for which an entertainment tax is due;

h) amounts obtained from public funds or grants;

i) income obtained from occasional activities like fundraising events with an entry fee, festivals, sweepstakes, conferences, which is used for social or professional purposes, according to their status;

j) extraordinary income resulting from the transfer of tangible assets owned by non-profit organizations, other than those that are or have been used in an economic activity;

k) income obtained from advertising and publicity, which is derived by non-profit public benefit organizations, according to the organization and operation laws, from the culture, scientific research, education, sport and health sectors, as well as by chambers of commerce and industry, trade unions and employers' organizations;

l) amounts received as a result of the failure to comply with the terms of the donation/sponsorship, according to the law, provided that those amounts are used by non-profit organizations during the current year or for the next years in order to achieve their goals and objectives, according to their articles of incorporation or status, as the case may be;

m) income obtained from compensations given by the insurance companies for damages caused to their tangible assets, other than those that are used in the economic activity;

n) amounts received from the income tax that is due by individuals, according to the provisions of Title III.

(3) Non-profit organizations, trade unions and employers' organizations shall be exempted from the payment of the profit tax also for the income obtained from economic activities of up to the equivalent in Romanian lei of 15.000 EUR, derived in a fiscal year, but no more than 10% of the total income that is exempted from the payment of the profit tax, as provided for in paragraph (2). The organizations mentioned in this paragraph are required to pay a profit tax for that part of the taxable profit related to the income, other than that provided for in paragraph (2) or in this paragraph, tax that is determined by applying the rate provided for in Article 17, paragraph (1) or in Article 18, as the case may be.

(4) The provisions of paragraphs (2) and (3) are also applicable for legal persons established and operating under the Law no. 1/2000 on the restoration of the property right on agricultural and forestry land, which are requested according to the provisions of the Land Law no. 18/1991 and Law no. 169/1997, as subsequently amended and completed.

Article 16

Fiscal year

(1) The fiscal year is the calendar year.

(2) When a taxpayer is set up or ceases to exist during a fiscal year the taxable period shall be the period of the calendar year for which the taxpayer has existed.

Article 17

Tax rates

The profit tax rate applied to the taxable profit is 16%, except as provided in Article 38.

Article 18

Minimum tax

(1) Taxpayers engaged in activities consisting of nightbars, nightclubs, discos, casinos or sports betting, including legal persons deriving that income based on a

partnership agreement, for which the profit tax owed for the activities provided in this Article is less than 5% of that income, are required to pay a 5% tax on that recorded income.

- (2) *** Repealed
- (3) *** Repealed
- (4) *** Repealed
- (5) *** Repealed
- (6) *** Repealed
- (7) *** Repealed

CHAPTER II

Determination of taxable profit

Article 19

General rules

(1) The taxable profit shall be calculated as the difference between the income obtained from any source and the expenses incurred for the purpose of obtaining the income, during a fiscal year, from which non-taxable income is deducted and to which non-deductible expenses are added. In determining the taxable profit, other items that are similar to the income and the expenses shall be also taken into consideration, according to the implementing rules.

(2) The accounting methods, established by legal regulations in force, regarding the taking out of the stocks from the inventory shall be recognized in calculating the taxable profit, except for the case provided in paragraph (3). The accounting methods for the stock assessment shall not change during the fiscal year.

(3) Taxpayers who have chosen until 30 April 2005 inclusive, according to the legal provisions, the taxation of the income related to the sales contracts paid in installments, shall continue to take advantage of this benefit, as the installments are paid, for the duration of those contracts; the related expenses shall be deductible on the same deadlines, proportional to the value of the installment recorded in the total value of the contract.

(4) In case of taxpayers performing international service activities, based on the conventions to which Romania is part, the income and the expenses incurred for the purpose of its achievement shall be taken into consideration in determining the taxable profit, according to certain special rules established in accordance with the provisions of those conventions.

(5) Transactions between related persons shall be made according to the principle of free market price, according to which the transactions between related persons are made under established or required terms, which should not differ from the commercial or financial relations established between independent enterprises. In determining the profits of the related persons the transfer pricing principles shall be considered.

Article 19¹

Deductions for research and development expenses

(1) In determining the taxable profit, the following fiscal incentives shall be granted for the research and development activities:

a) an additional deduction of 20% of the eligible expenses incurred for these activities in the calculation of the taxable profit; the additional deduction shall be calculated on a quarterly/annually basis; in case a fiscal loss is realized, it shall be recovered according to the provisions of Article 26;

b) the application of the accelerated depreciation method also for the apparatus and equipment used in research and development activities.

(2) For the application of the provisions of this Article, rules regarding the deductions for research and development expenses shall be developed and approved by joint order of the Minister of Public Finance and the Minister of Education, Research and Innovation.

Article 19²

Tax exemption for reinvested profit

(1) Profit invested in the production and/or purchase of technological equipment (machinery, equipment and work facilities), as provided in subgroup 2.1 of the Catalogue on the classification and useful life of fixed assets, which are used to obtain taxable income, shall be tax exempted.

(2) Profit invested according to paragraph (1) represents the balance of the profit and loss account or, respectively, the accounting profit accumulated from the beginning of the year, used for this purpose in the year the investment was made. The profit tax exemption related to the investments made shall be granted within the limits of the profit tax that is due for that period.

(3) For the period 1 October - 31 December 2009, for the application of the incentive, the accounting profit registered as of 1 October 2009 and invested in the assets mentioned in paragraph (1), which are produced and/or purchased after that date, shall be considered.

(4) For taxpayers that are required to pay profit tax on a quarterly basis, where investments are made in the previous quarters, the amount of the previously invested profit for which the incentive was granted shall be deducted from the accounting profit accumulated from the beginning of the year.

(5) For taxpayers referred to in Article 103 becoming profit tax payers in accordance with the provisions of Article 107¹, the accounting profit accumulated from the beginning of the year and invested in the assets mentioned in paragraph (1), which are produced and/or purchased starting with the quarter in which they have become profit tax payers, shall be considered in order for the incentive to be granted. For the year 2009, the accounting profit taken into consideration in order for the incentive to be granted shall be the one registered after 1 October 2009.

(6) The exemption shall be calculated on a quarterly or annually basis, as the case may be, and the amount of the profit for which the profit tax exemption was granted shall be allocated with priority for establishing the reserves up to the accounting profit registered at the end of the fiscal year. In case an accounting loss is incurred at the end of the fiscal year, the regularization of the invested profit shall not be made and the taxpayer shall not be required to allocate the amount of the invested profit for establishing the reserves.

(7) For assets referred to in paragraph (1), which are obtained over several consecutive years, the incentive shall be granted for works that are actually performed, based on partial work reports, for investments that are partially put into operation during that year.

(8) The provisions of paragraph (1) shall apply to assets that are considered to be new, meaning that they have not been previously used.

(9) Taxpayers benefiting from the provisions of paragraph (1) shall be required to keep those assets in the patrimony at least for a period equal to half of their useful life, which is established according to the Catalogue on the classification and useful life of fixed assets. If this condition is not met, the profit tax shall be recalculated and penalties for late payment shall be determined for those amounts from the date the incentive was granted, according to the law. The assets transferred within the reorganization operations shall not be subject to these provisions, provided that the receiving company takes over the reserve related to the exempted profit, thus assuming the rights and obligations of the transferring company, as well as the assets disposed within the liquidation/bankruptcy procedure, according to the law.

(10) *** Repealed

(11) Taxpayers applying the provisions of this Article may not benefit by the provisions of Article 26¹ of the Law no. 346/2004 on the incentives granted for the creation and development of small and medium enterprises, as subsequently amended and completed.

(12) Notwithstanding the provisions of Article 7, paragraph (1), section 33 and Article 24, paragraph (5), the value for tax purposes or, respectively, the registration value of the assets provided in paragraph (1) shall be determined by deducting the amount for which the incentive provided in paragraph (1) was granted from the production and/or purchase value.

(13) The provisions of this Article shall be applied until 31 December 2010, inclusively.

Article 19³

Fiscal rules for taxpayers applying accounting regulations in accordance with the International Financial Reporting Standards (IFRS)

Taxpayers applying accounting regulations in accordance with the IFRS in order to determine the taxable profit shall also take into consideration the following rules:

a) for the amounts registered in the retained earnings of specific provisions, as a result of implementing the accounting regulations in accordance with the IFRS as an accounting basis, the following tax treatment shall be applied:

1. the amounts registered in the credit balance of the account "Retained earnings of specific provisions", as a difference between the value of the specific provisions determined on 31 December 2011, according to the Regulation of the National Bank of Romania no. 3/2009 on the classification of loans and investments, as well as the creation, adjustment and use of specific provisions for the credit risk, as subsequently amended and completed, and the adjustments to depreciation reflected on 1 January 2012 according to the IFRS and related to the items for which those specific provisions were created, shall be treated as reserves and taxed according to Article 22, paragraph (5);

2. the amounts registered in the debit balance of the account "Retained earnings of specific provisions", as a difference between the value of the specific provisions determined on 31 December 2011, according to the Regulation of the National Bank of Romania no. 3/2009, as subsequently amended and completed, and the adjustments to depreciation reflected on 1 January 2012 according to the IFRS and related to the items for which those specific provisions were created, shall be

regarded as items similar to the expenses, in stages, in equal installments, over a period of 3 years;

b) for the amounts registered in the retained earnings resulted from an inflation rate update, as a result of implementing the accounting regulations in accordance with the IFRS as an accounting basis, the following tax treatment shall be applied:

1. the net amounts registered in the credit balance of the account retained earnings resulted from an inflation rate update of depreciable fixed assets and land shall be treated as reserves, provided that these amounts are reflected in an distinct analytical account, and taxed according to Article 22, paragraph (5);

2. the amounts registered in the credit balance of the account retained earnings resulted from an inflation rate update of assets, except for the inflation rate update of depreciable fixed assets and land, shall not be regarded as items similar to the expenses;

3. the amounts registered in the debit balance of the account retained earnings resulted from an inflation rate update of liabilities, except for the inflation rate update of fixed assets depreciation, shall not be regarded as items similar to the expenses;

c) for the amounts registered in the retained earnings resulted from other adjustments, as a result of implementing the accounting regulations in accordance with the IFRS as an accounting basis, except for the amounts resulted from specific provisions and the amounts resulted from an inflation rate update, the following tax treatment shall be applied:

1. the amounts resulted from the cancellation of some expenses for which a deduction was granted shall be regarded as items similar to the income;

2. the amounts representing items of additionally registered income, according to the accounting regulations in accordance with the IFRS, shall be regarded as items similar to the income;

3. the amounts representing items of additionally registered expenses, according to the accounting regulations in accordance with the IFRS, shall be regarded as items similar to the expenses, provided that they are deductible in accordance with the provisions of Article 21;

4. the amounts resulted from the cancellation of some expenses for which a deduction was not granted shall not be regarded as items similar to the income;

5. the amounts resulted from the cancellation of some income representing non-taxable income shall not be regarded as items similar to the expenses;

d) when in the retained earnings resulted from other adjustments, as a result of implementing the accounting regulations in accordance with the IFRS as an accounting basis, some amounts resulted from the restatement of some provisions are registered, other than those referred to in letter a), the amounts resulted from the cancellation of the provisions representing non-deductible expenses shall not be regarded as items similar to the income and the amounts resulted from the introduction of the provisions, according to the accounting regulations in accordance with the IFRS, shall not be regarded as items similar to the expenses.

Article 20

Non-taxable income

The following income shall be regarded as non-taxable income when calculating the taxable profit:

a) dividends received from a Romanian legal person;

- b) favorable differences in the value of the shares, which are registered as a result of the incorporation of the reserves, benefits or share premiums at the level of the legal persons in which the securities are being held. They shall be taxed on the date of the assignment, voluntary transfer, withdrawal of the registered capital or liquidation of the legal person in which the securities are being held;
- c) income from the cancellation of the expenses for which a deduction was not granted, income from the reduction or cancellation of the provisions for which a deduction was not granted, income from the recovery of non-deductible expenses, income from the reimbursement or cancellation of interest and/or penalties for late payment for which a deduction was not granted, as well as income representing the cancellation of the reserve registered as a result of the participation in kind to the registered capital of other legal persons;
- d) non-taxable income that is expressly provided in agreements and memoranda approved by law;
- e) between 1 January 2009 and 31 December 2009, inclusively, income from the trading of shares on a market that is authorized and supervised by the National Securities Commission. During the same period, expenses representing the registered value of those shares, as well as the expenses incurred during the trading operations shall be regarded as non-deductible expenses in calculating the taxable profit;
- f) income from deferred profit tax determined and registered by taxpayers applying accounting regulations in accordance with the IFRS;
- g) income representing a change in the fair value of the real estate investments as a result of a subsequent evaluation based on the fair value model made by taxpayers applying accounting regulations in accordance with the IFRS. These amounts are taxable at the same time with the deduction of the fiscal depreciation or at the time of removing those real estate investments from the accounting, as the case may be.

Article 20¹

Tax treatment of dividends received from member states of the European Union

(1) After the date Romania will join the European Union there shall also be regarded as non-taxable income the following:

a) dividends received by a Romanian legal person, which is a parent company, from one of its subsidiaries located in a member state, if the Romanian legal person cumulatively meets the following conditions:

1. is subject to the profit tax, according to the provisions of Title II, without the possibility of an option or exemption;

2. has a minimum holding of 15% in the registered capital of a legal person located in a member state and a minimum holding of 10%, respectively, starting with 1 January 2009;

3. on the date the income from dividends is registered, has maintained the minimum holding provided in section 2 for an uninterrupted period of at least 2 years.

There shall also be regarded as non-taxable income the dividends received by the Romanian legal person through its permanent establishment located in a member state, provided that the Romanian legal person cumulatively meets the conditions provided in sections 1 to 3;

b) dividends received by permanent establishments located in Romania of foreign legal persons of other member states, which are parent companies, and distributed

by their subsidiaries located in member states, provided that the foreign legal person cumulatively meets the following conditions:

1. takes one of the forms of organization provided in paragraph (4);
2. according to the tax laws of the member state is considered to be a resident of that member state and, under the terms of a convention for the avoidance of double taxation concluded with a third state, is not considered to be resident for tax purposes outside the European Union;
3. is subject to a profit tax or to a similar tax, according to the tax laws of a member state, without the possibility of an option or exemption;
4. has a minimum holding of 15% in the registered capital of the subsidiary located in a member state and a minimum holding of 10%, respectively, starting with 1 January 2009;
5. on the date the income from dividends is registered by the permanent establishment located in Romania, the foreign legal person has maintained the minimum holding provided in section 4 for an uninterrupted period of at least 2 years.

(2) The provisions of paragraph (1), letters a) and b) shall not apply to profits distributed to Romanian legal persons or to permanent establishments located in Romania of foreign legal persons of a member state, in relation to the liquidation of a subsidiary of a member state.

(3) For the purposes of the present Article, the terms and expressions mentioned below shall have the following meaning:

- a) member state - a state of the European Union;
- b) subsidiary of a member state - a foreign legal person whose registered capital includes also the minimum holding provided in paragraph (1), letter a), section 2 and letter b), section 4, maintained by a Romanian legal person or by a permanent establishment located in Romania of a foreign legal person of a member state;
- c) third state - any other state that is not a member state of the European Union.

(4) For the purposes of paragraph (1), letter b), section 1, the forms of organization for foreign legal persons are the following:

- a) companies under Belgian law known as "société anonyme"/"naamloze vennootschap", "société en commandite par actions"/"commanditaire vennootschap op aandelen", "société privée à responsabilité limitée"/"besloten vennootschap met beperkte aansprakelijkheid", "société coopérative à responsabilité limitée"/"coöperatieve vennootschap met beperkte aansprakelijkheid", "société coopérative à responsabilité illimitée"/"coöperatieve vennootschap met onbeperkte aansprakelijkheid", "société en nom collectif"/"vennootschap onder firma", "société en commandite simple"/"gewone commanditaire vennootschap", public undertakings which have adopted one of the above-mentioned legal forms and other companies constituted under Belgian law subject to Belgian corporate tax;
- b) companies under Danish law known as "aktieselskab" and "anpartsselskab"; other companies subject to tax under the Corporation Tax Act, in so far as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to 'aktieselskaber';
- c) companies under German law known as "Aktiengesellschaft", "Kommanditgesellschaft auf Aktien", "Gesellschaft mit beschränkter Haftung", "Versicherungsverein auf Gegenseitigkeit", "Erwerbs- und Wirtschaftsgenossenschaft", "Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts" and other companies constituted under German law subject to German corporate tax;

- d) companies under Greek law known as "anonume etaireia", "etaireia periorismenes eutunes (E.P.E.)" and other companies constituted under Greek law subject to Greek corporate tax;
- e) companies under Spanish law known as "sociedad anónima", "sociedad comanditaria por acciones", "sociedad de responsabilidad limitada", public law bodies which operate under private law; other entities constituted under Spanish law subject to Spanish corporate tax ("Impuesto sobre Sociedades");
- f) companies under French law known as "société anonyme", "société en commandite par actions", "société à responsabilité limitée", "sociétés par actions simplifiées", "sociétés d'assurances mutuelles", "caisses d'épargne et de prévoyance", "sociétés civiles" that are automatically subject to corporation tax, "coopératives", "unions de coopératives", industrial and commercial public establishments and undertakings, and other companies constituted under French law subject to French corporate tax;
- g) companies incorporated or existing under Irish law, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;
- h) companies under Italian law known as "società per azioni", "società in accomandita per azioni", "società a responsabilità limitata", "società cooperative", "società di mutua assicurazione" and private and public entities whose activity is wholly or principally commercial;
- i) companies under Luxembourg law known as "société anonyme", "société en commandite par actions", "société à responsabilité limitée", "société coopérative", "société coopérative organisée comme une société anonyme", "association d'assurances mutuelles", "association d'épargne-pension", "entreprise de nature commerciale, industrielle ou minière de l'Etat, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public" and other companies constituted under Luxembourg law subject to Luxembourg corporate tax;
- j) companies under Dutch law known as "naamloze vennootschap", "besloten vennootschap met beperkte aansprakelijkheid", "open commanditaire vennootschap", "coöperatie", "onderlinge waarborgmaatschappij", "fonds voor gemene rekening", "vereniging op coöperatieve grondslag", "vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt" and other companies constituted under Dutch law subject to Dutch corporate tax;
- k) companies under Austrian law known as "Aktiengesellschaft", "Gesellschaft mit beschränkter Haftung", "Versicherungsvereine auf Gegenseitigkeit", "Erwerbs- und Wirtschaftsgenossenschaften", "Betriebe gewerblicher Art von Körperschaften des öffentlichen Rechts", "Sparkassen" and other companies constituted under Austrian law subject to Austrian corporate tax;
- l) commercial companies or civil law companies having a commercial form and public undertakings incorporated in accordance with Portuguese law;
- m) companies under Finnish law known as "osakeyhtiö"/"aktiebolag", "osuuskunta"/"andelslag", "säästöpankki"/"sparbank" and "vakuutusyhtiö"/"försäkringsbolag";
- n) companies under Swedish law known as "aktiebolag", "försäkringsaktiebolag", "ekonomiska föreningar", "sparbanker", "ömsesidiga försäkringsbolag";
- o) companies incorporated under the law of the United Kingdom of Great Britain and Northern Ireland;

- p) companies incorporated under Council Regulation no. 2157/2001/EC of 8 October 2001 on the Statute for a European company (SE) and Council Directive no. 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and cooperative societies incorporated under Council Regulation no. 1435/2003/EC of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive no. 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees;
- q) companies under Czech law known as "akciová společnost", "společnost s ručením omezeným";
- r) companies under Estonian law known as "täisühing", "usaldusühing", "osaühing", "aktsiaselts", "tulundusühistu";
- s) companies under Cypriot law known as "etaireies" subject to Cypriot corporate tax;
- š) companies under Latvian law known as "akciju sabiedrība", "sabiedrība ar ierobežotu atbildību";
- t) companies incorporated under the law of Lithuania;
- ť) companies under Hungarian law known as "közkereseti társaság", "betéti társaság", "közös vállalat", "korlátolt felelősségű társaság", "részvénytársaság", "egyesülés", "kozhasznu tarsasag", "szövetkezet";
- u) companies under Maltese law known as "Kumpaniji ta' Responsabilita' Limitata", "Soċjetajiet en commandite li l-kapital tagħhom maqsum f'azzjonijiet";
- v) companies under Polish law known as "spółka akcyjna", "spółka z ograniczoną odpowiedzialnością";
- w) companies under Slovenian law known as "delniška družba", "komanditna družba", "družba z omejeno odgovornostjo";
- x) companies under Slovak law known as "akciová spoločnosť", "spoločnosť s ručením obmedzeným", "komanditná spoločnosť".
- (5) The provisions of this Article are transposing the provisions of the Council Directive no. 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states, as amended by the Council Directive no. 2003/123/EC.

Article 21

Expenses

(1) For the determination of the taxable profit, only the expenses incurred for the purpose of obtaining taxable income, including those governed by the laws in force, shall be regarded as deductible expenses.

(2) There shall also be regarded as expenses incurred for the purpose of obtaining income the following:

- a) packaging acquisition expenses, during a lifetime determined by the taxpayer;
- b) expenses incurred for ensuring the safety of the work and expenses incurred for the prevention of work accidents and occupational diseases, according to the law;
- c) expenses representing insurance contributions for work accidents and occupational diseases, according to the law and expenses representing insurance premiums for occupational risks;
- d) advertising and publicity expenses incurred for the purpose of popularizing a company, products or services, under a written contract, as well as the costs related to the production of materials necessary for the distribution of advertising messages. There shall also be included in the category of advertising and publicity expenses the

goods that are offered in advertising campaigns as samples, in the testing of products and demonstrations in outlets, as well as other goods and services that are offered in order to stimulate the sales;

e) travel and accommodation expenses at home and abroad incurred for employees and administrators, as well as for other related individuals, which are provided in the secondary legislation;

f) contribution to the mutual guarantee reserve of the central house of the credit cooperatives;

g) registration fees, subscriptions and mandatory contributions governed by the laws in force, as well as contributions to the fund used in the negotiation of the collective labor contract;

h) expenses for training and professional development of the staff;

i) expenses for marketing, market research, promotion on existing or new markets, participation in fairs and exhibitions, in business missions, publishing of personal information materials;

j) research expenses, as well as development expenses, which do not qualify to be recognized as intangible assets in accounting terms;

k) expenses for the improvement of the management, computer systems, for the introduction, maintenance and improvement of the quality management systems, for obtaining an attestation in accordance with the quality standards;

l) expenses for environmental protection and conservation of resources;

m) registration fees, subscriptions and contributions to the chambers of commerce and industry, trade unions and employers' organizations;

n) losses registered on the removal from the records of unpaid debt claims, in the following cases:

1. the completion of the insolvency proceedings of the debtors on the basis of a court decision;

2. the debtor has died and the debt claim can not be recovered from his/her heirs;

3. the debtor has been dissolved, in case of a limited liability company with a sole partner or has been liquidated, without any successor;

4. the debtor faces major financial difficulties affecting its entire patrimony;

o) expenses incurred by economic operators with the assessment/reassessment of tangible fixed assets belonging to the public domain of the state or to the administrative - territorial units, received under administration/licence, as the case may be, expenses incurred at the request of the head of the institution holding the property right;

p) expenses incurred by economic operators with the registration in the land registers and in the real estate advertising records, as the case may be, of the property right of the state or of the administrative - territorial units on public goods received under administration/licence, as the case may be, expenses incurred at the request of the head of the institution holding the property right;

r) expenses incurred as a result of the reimbursement of the grants received from the Government, governmental agencies and other national and international institutions, according to the law;

s) expenses incurred with the benefits granted to employees in equity instruments settled in cash at the moment the benefits are actually granted, provided that they are taxed under Title III.

(3) The following expenses shall have a limited deductibility:

- a) protocol expenses, up to a rate of 2% applied to the difference between the total taxable income and the total expenses related to the taxable income, other than protocol expenses and profit tax expenses;
- b) expenses incurred with the travel allowances granted to employees for travels made in Romania and abroad, up to 2.5 times the legal level established for public institutions;
- c) social expenses, up to a rate of 2% applied to the value of the expenses incurred with the wages, according to Law no. 53/2003 - the Labor Code, as subsequently amended and completed. There shall be subject to this limit, with priority, the aids for child birth, aids for funerals, aids for serious or incurable diseases and for prostheses, as well as the expenses for the proper operation of certain activities or units administered by taxpayers: kindergartens, nurseries, health services for occupational diseases and work accidents rendered until a hospitalization into a medical unit is made, museums, libraries, canteens, sports grounds, clubs, homes for singles, schools under their patronage, as well as other expenses incurred pursuant to the collective labor contract. There may also be deducted, subject to this limit, the expenses for: childcare vouchers granted by the employer in accordance with the legislation in force, gifts in cash or in kind offered to minor children and to employees, gifts in cash or in kind offered to female employees, the cost of the benefits granted for treatment and rest, including the transport for the employees and for their family members, aids for employees who have suffered household damages and the contribution to the intervention funds of the professional association of miners, aids for the support of children in schools and orphanages;
- d) perishables, within the limits established by the professional bodies of the central administration, in collaboration with specialized institutions, with the consent of the Ministry of Public Finance;
- e) expenses incurred with meal tickets offered by employers, according to the law;
- f) *** Repealed
- g) expenses incurred with provisions and reserves, within the limit provided in Article 22;
- h) expenses incurred with interest and differences in the foreign currency exchange rate, within the limit provided in Article 23;
- i) depreciation, within the limit provided in Article 24;
- j) expenses incurred on behalf of an employee and made to optional pension schemes, up to an amount equal to the equivalent in Romanian lei of 400 EUR for a fiscal year and for each participant;
- k) expenses incurred with private health insurance premiums, up to an amount equal to the equivalent in Romanian lei of 250 EUR for a fiscal year and for each participant;
- l) expenses incurred with the operation, maintenance and repair of job dwellings located in the place where the registered office is situated or where the secondary offices of the company are located, which are deductible up to the level that corresponds to the constructed areas referred to in the Dwellings Law no. 114/1996, republished, as subsequently amended and completed, which shall be increased by 10% in fiscal terms;
- m) expenses incurred with the operation, maintenance and repair of premises located in a privately owned dwelling of an individual, used also for personal purposes, which are deductible up to the level that corresponds to the areas made available to the company based on the contracts concluded between the parties for this purpose;

n) expenses incurred with the operation, maintenance and repair, excluding those on fuel, for cars used by top management and administrative employees of the legal person, which are deductible up to a single car for each employee with such position.

(4) The following expenses shall not be deductible:

a) expenses of the taxpayer incurred with the profit tax that is due, including those representing differences from the previous years or from the current year, as well as the profit tax or the income tax paid abroad. There shall also be non-deductible the expenses incurred with the taxes that were not withheld at source on behalf of non-resident individuals and legal persons for the income obtained from Romania, as well as the expenses incurred with the deferred profit tax registered by taxpayers applying accounting regulations in accordance with the IFRS;

b) interest/increases in tax for late payment, fines, seizures and penalties for late payment that are owed to the Romanian/foreign authorities, according to the legal provisions;

c) expenses incurred with the goods representing stocks or tangible assets identified as missing or damaged, which are non-imputable and for which insurance contracts were not concluded, as well as the related value added tax, provided that it is due according to the provisions of Title VI. There shall not be subject to these provisions the depreciable stocks and fixed assets destroyed as a result of natural disasters or other force majeure causes, as laid down in the secondary legislation;

d) expenses incurred with the value added tax related to goods offered to employees as benefits in kind, provided that their value was not subject to a withholding tax;

e) expenses incurred for shareholders or partners, other than those incurred with payments made for goods delivered or services rendered to the taxpayer, at the market price of such goods or services;

f) expenses registered in the bookkeeping, which can not be proved by a supporting document, according to the law, whereby the conduct of the operation or the entry into inventory is proved, as the case may be, according to the secondary legislation;

g) expenses registered by agricultural companies, established under the law, for the right to use the agricultural land brought by the associated members, in excess of the distribution rate applied to the production achieved from its use, as provided in the contract of partnership or association;

h) *** Repealed

i) expenses incurred with non-taxable income, except for those provided in Article 20, letter c);

j) expenses incurred with the contributions paid in excess of the established limits or which are not covered by the law;

k) expenses incurred with insurance premiums paid by an employer on behalf of an employee, which are not included in the wages received by the employee, according to Title III;

l) other expenses incurred with wages and/or similar expenses, which are not taxed at the level of the employee, except for the provisions of Title III;

m) expenses incurred with management, consultancy and support services or other services for which the taxpayers can not justify the need of rendering them for the purpose of conducting the business and for which there are no contracts concluded;

n) expenses incurred with insurance premiums that are not related to the assets of the taxpayer, as well as those which are not related to the object of activity, except those which relate to goods serving as a bank guarantee for credits used to conduct the business for which the taxpayer is authorized or used as part of hiring or leasing contracts, according to the contract terms;

o) losses incurred with the removal from the records of uncertain or disputed uncollected debt claims, for the part which is not covered by a provision, according to Article 22, as well as the losses incurred with the removal from the records of uncertain or disputed uncollected debt claims in other cases than those provided in Article 21, paragraph (2), letter n). In this case, the taxpayers that are removing from the records the uncollected customers are required to inform them in writing about the removal from the records of those debt claims in order to recalculate the taxable profit of the debtor, as the case may be;

p) expenses incurred with sponsorship and/or patronage and expenses incurred with private scholarships, granted in accordance with the law; the taxpayers that are making sponsorships and/or acts of patronage, according to the provisions of the Law no. 32/1994 on sponsorship, as subsequently amended, and of the Law no. 334/2002 on libraries, republished, as subsequently amended and completed, as well as those granting private scholarships, according to the law, shall deduct those amounts from the profit tax that is due, up to the minimum limit mentioned below:

1. 3 ‰ of the turnover;

2. 20% of the profit tax that is due.

The expenses incurred with the sponsorship of public libraries shall also be included within those limits, for the construction of premises, for endowment, for the purchase of information technology and specific documents, for funding the training programs of the librarians, the exchange of specialists, the specialization scholarships, the participation in international congresses;

r) expenses registered in the bookkeeping based on a document issued by an inactive taxpayer whose tax registration certificate has been suspended by an order of the president of the National Agency for Fiscal Administration;

s) expenses incurred with taxes and fees paid to non-governmental organizations or professional associations that are in connection with the activity carried out by the taxpayers and exceeding the equivalent in Romanian lei of 4.000 EUR, annually, other than those provided in paragraph (2), letters g) and m);

ș) expenses representing the depreciation value of fixed assets, where there is a decrease in their value as a result of a revaluation;

ș¹) expenses incurred with the revaluation of intangible assets, where there is a decrease in their value as a result of a revaluation made by taxpayers applying accounting regulations in accordance with the IFRS;

ș²) expenses incurred with the revaluation of fixed assets, where there is a decrease in their value as a result of a revaluation made by taxpayers applying accounting regulations in accordance with the IFRS;

ș³) expenses representing a change in the fair value of the real estate investment, where there is a decrease in its value as a result of a subsequent evaluation made by taxpayers applying accounting regulations in accordance with the IFRS, using the fair value model;

ș⁴) expenses representing the depreciation of fixed assets, incurred by taxpayers applying accounting regulations in accordance with the IFRS, at the time the non-current assets held for sale are turned into non-current assets held for conducting the business;

t) 50% of the expenses on fuel for road motor vehicles used solely for road passenger transport, with a maximum authorized weight not exceeding 3.500 kg and with not more than 9 passenger seats, including the driver's seat, which are owned or used by the taxpayer. Notwithstanding these provisions, the expenses on fuel are

fully deductible when those vehicles are classified into one of the following categories:

1. vehicles used solely for: intervention, repair, security and protection, courier services, transport of personnel to and from the place of business, as well as specially adapted vehicles to be used as camera trucks, vehicles used by sales agents and by labor recruitment agents;

2. vehicles used for passenger transport for which a payment is requested, including the taxi driving activity;

3. vehicles used for rental to other persons, including the training activity carried out in driving schools;

4) expenses incurred with benefits granted to employees as equity instruments settled in shares. They are regarded as items that are similar to the expenses, at the moment the benefits are actually granted, provided that they are taxed according to Title III.

(5) The "Administration of the State Protocol Patrimony", a self-managed institution, shall deduct the following expenses when calculating the taxable profit:

a) expenses representing the difference between the amounts that are due under a contract for the rendering of services that is concluded with the Senate, the Chamber of Deputies, the Presidential Administration, the Government of Romania and the Constitutional Court for the payment of the activity of representation and protocol, and the expenses that are actually incurred by the institution;

b) expenses incurred under the law in order to ensure the administration, integrity and protection of the building named "Palat Elisabeta", which is a state owned property.

c) *** Repealed

(6) When calculating the taxable profit, the national company "the State Printing House" shall deduct under the law the expenses related to the manufacturing and issuance of temporary/permanent residence permits for foreign citizens.

Article 22

Provisions and reserves

(1) The taxpayer shall be entitled to deduct the reserves and provisions, only in accordance with this Article, as follows:

a) the legal reserve shall be deductible up to a 5% rate applied on the accounting profit, before the calculation of the profit tax, from which non-taxable income is deducted and to which expenses related to such non-taxable income are added, until it reaches a fifth of the subscribed and paid-in registered capital or of the patrimony, as the case may be, according to the laws of organization and operation. When it is used to cover losses or is distributed in any form, the subsequent restoration of the reserve shall no longer be deductible in calculating the taxable profit. As an exception, the reserve constituted by legal persons providing utilities to companies under restructuring, reorganization or privatization may be used to cover the losses in value of the block of shares obtained as a result of the conversion of the debt claims, and the amounts intended for its subsequent restoration shall be deductible in calculating the taxable profit;

b) provisions for performance guarantees offered to clients;

c) provisions constituted for up to 20% as of 1 January 2004, 25% as of 1 January 2005, 30% as of 1 January 2006, of the value of the debt claims on clients, registered

by the taxpayers, other than those provided in letters d), f), g) and i), which cumulatively meet the following conditions:

1. they are registered after 1 January 2004;
2. they are not collected for a period of more than 270 days from the time of payment;
3. they are not guaranteed by another person;
4. they are payable by a person who is not related to the taxpayer;
5. they were included in the taxable income of the taxpayer;

d) specific provisions constituted by non-banking financial institutions listed in the General Register of the National Bank of Romania, by paying institutions that are Romanian legal persons providing credits for payment services, by electronic money institutions that are Romanian legal persons providing credits for payment services, as well as specific provisions constituted by other legal persons, according to the laws of organization and operation;

d¹) adjustments for depreciation on assets for which, according to the prudential regulations of the National Bank of Romania, prudential value adjustments are determined or, where appropriate, amounts of expected losses, registered by credit institutions that are Romanian legal persons and by branches located in Romania that belong to credit institutions from non-member countries of the European Union or from countries that do not belong to the European Economic Area, according to the accounting regulations in accordance with the IFRS and the prudential filters, according to the regulations issued by the National Bank of Romania. The amounts representing the reduction or cancellation of prudential filters shall be regarded as items similar to the income;

d²) adjustments for depreciation registered by branches located in Romania that belong to credit institutions from member countries of the European Union or from countries that belong to the European Economic Area, according to the accounting regulations in accordance with the IFRS, which relate to loans and investments that fall within the scope of the prudential regulations of the National Bank of Romania on prudential value adjustments applicable to credit institutions that are Romanian legal persons and to branches located in Romania that belong to credit institutions from non-member countries of the European Union or from countries that do not belong to the European Economic Area;

e) *** Repealed

f) *** Repealed

g) *** Repealed

h) technical reserves constituted by insurance and reinsurance companies, according to the legal provisions on organization and operation, except for the equalization reserve. For insurance contracts that are ceded to reinsurance, the reserves shall be reduced so that their level covers the part of the risk that remains with the insurer, after the deduction of the reinsurance;

i) risk provisions for financial market operations constituted according to the regulations of the Romanian National Securities Commission;

j) provisions constituted for up to 100% of the value of the debt claims on clients, registered by the taxpayers, other than those provided in letters d), f), g) and i), which cumulatively meet the following conditions:

1. they are registered after 1 January 2007;
2. the debt claim is held in a legal person for which the bankruptcy opening proceedings are declared, based on a court decision that certifies such situation;
3. they are not guaranteed by another person;

4. they are payable by a person who is not related to the taxpayer;
 5. they were included in the taxable income of the taxpayer;
 - k) provisions for the closure and the tracing of waste deposits after their closure constituted by taxpayers conducting waste storage activities, according to the law, up to the limit specified in the project for the closure and the tracing of the waste deposit after its closure, corresponding to the share of the collected storage charges;
 - l) provisions constituted by Romanian airline companies to cover up the maintenance and repair expenses incurred with the aircraft fleet and related components, according to the aircraft maintenance programs that are duly authorized by the Romanian Civil Aeronautical Authority.
- (2) Taxpayers authorized to conduct activities in the field of exploitation of natural resources are required to register in the bookkeeping and to deduct the provisions for the restoration of damaged land and for its return to the economic, forestry or agricultural cycle, up to a 1% rate applied on the difference between the income obtained from the production and sale of natural resources, and the expenses incurred with their extraction, processing and delivery, throughout the entire period of operating the exploitation of the natural resources.
- (3) For holders of oil agreements conducting oil operations in maritime areas that include areas with a water depth that is greater than 100 meters, the rate of the provision constituted for the dismantling of wells, demobilization of the facilities, fixtures and annexes, as well as for the environmental rehabilitation, shall be of 10% applied on the difference between the registered income and expenses, throughout the entire period of oil exploitation.
- (4) The "Romanian Air Traffic Services Administration" - ROMATSA, a self-managed institution, shall constitute a provision on a quarterly basis, according to the law, for the difference between the operating income that is actually obtained from the airway activity and the actual expenses incurred with the airway activity, which shall be used to cover the operating expenses that are exceeding the annually established charges of the EUROCONTROL.
- (5) The reduction or cancellation of any provision or of the reserve that was previously deducted shall be included in the taxable income, regardless whether the reduction or cancellation was made as a result of a change in the destination of the provision or reserve, of the distribution of the provision or reserve to shareholders in any form, of the liquidation, division or merger of the taxpayer or of any other reason. The provisions of this paragraph shall not apply if some other taxpayer takes over a provision or a reserve in connection with a division or merger, and the regulations of this Article shall continue to apply to such provision or reserve.
- (5¹) Notwithstanding the provisions of paragraph (5), reserves resulted from the revaluation of fixed assets, including land, made after 1 January 2004, which are deducted when calculating the taxable profit by way of a fiscal depreciation or of the expenses incurred with transferred and/or destroyed assets, shall be taxed at the time the fiscal depreciation is deducted or at the time such fixed assets are removed from the bookkeeping, as the case may be.
- (5²) Notwithstanding the provisions of paragraph (5), reserves resulted from the revaluation of intangible assets made by taxpayers applying accounting regulations in accordance with the IFRS, which are deducted when calculating the taxable profit by way of a fiscal depreciation or of the expenses incurred with the transfer of intangible assets, shall be taxed at the time the fiscal depreciation is deducted or at the time such intangible assets are removed from the bookkeeping, as the case may be.

(6) Amounts registered as legal reserves and reserves representing tax incentives shall not be used to increase the registered capital or to cover the losses. When the provisions of this paragraph are not complied with, the profit tax shall be recalculated on such amounts and interest and penalties for late payment shall be determined from the date the incentive was granted, according to the law. There shall not be subject to taxation the reserves for the influences of the exchange rate related to the appreciation of the foreign currency amounts that are constituted according to the law and registered by banking companies - Romanian legal persons and by branches of foreign banks operating in Romania.

(7) For the purposes of this Article, the creation of a provision or reserve is also referring to the increase of a provision or reserve.

(8) Provisions constituted for debt claims on clients, registered by taxpayers before 1 January 2004, shall be deductible up to the limits provided in paragraph (1), letter c), provided that those debt claims cumulatively meet the following conditions:

- a) they are not guaranteed by another person;
- b) they are payable by a person who is not related to the taxpayer;
- c) they were included in the taxable income of the taxpayer;
- d) the debt claim is held in a legal person for which the bankruptcy proceedings were initiated, based on a court decision that certifies such situation;
- e) there are no other fiscally deductible provisions constituted for those debt claims.

Article 23

Expenses incurred with interest and exchange rate differences

(1) Expenses incurred with interest shall be fully deductible when the capital indebtedness is less than or equal to three. The capital indebtedness shall be determined as a ratio between the borrowed capital that has to be refunded after more than a year and the equity capital determined as the average of the values registered at the beginning of the year and at the end of the period for which the profit tax is determined. The term "borrowed capital" means the total credits and loans that have to be refunded after more than a year, according to the contractual terms.

(2) When the capital indebtedness is higher than three, the expenses incurred with interest and net losses from exchange rate differences, which relate to the loans taken into account in determining the indebtedness, shall not be deductible. They shall be carried forward in the next period, under the terms of paragraph (1), until they are fully deducted.

(3) When the expenses incurred with exchange rate differences of the taxpayer are exceeding the income from exchange rate differences, the difference shall be treated as an expense incurred with interest, according to paragraph (1), and the deductibility of such difference shall be subject to the limitations provided in paragraph (1). The expenses incurred with exchange rate differences, which are subject to the limitations provided in this paragraph, shall be those related to the loans taken into account in determining the capital indebtedness.

(4) Interest and losses from exchange rate differences, which relate to the loans obtained directly or indirectly from international development banks and similar organizations, which are specified in the secondary legislation, and those that are guaranteed by the state, those related to the loans obtained from Romanian or foreign credit institutions, from non-banking financial institutions, from legal persons authorized to give loans according to the law, as well as those obtained from

debentures that are admitted for trading on a regulated market, shall not be subject to the provisions of this Article.

(5) For loans obtained from other entities, except for those mentioned in paragraph (4), the deductible interest shall be limited to:

a) the level of the reference interest rate of the National Bank of Romania, which corresponds to the last month of a quarter, for loans denominated in Romanian lei; and

b) the level of the annual interest rate of 9%, for loans denominated in foreign currency. This level of the interest rate shall be applied in determining the taxable profit related to the fiscal year 2004. The level of the interest rate for loans denominated in foreign currency shall be updated by Government Decision.

(6) The limitations provided in paragraph (5) shall be separately applied for each loan, before the provisions of paragraphs (1) and (2) are applied.

(7) The provisions of paragraphs (1) to (3) shall not be applied to banking companies that are Romanian legal persons, to branches of foreign banks operating in Romania, to leasing companies in respect of leasing operations, to mortgage credit companies, to credit institutions, as well as to non-banking financial institutions.

(8) In case of a foreign legal person that carries on a business in Romania through a permanent establishment, the provisions of this Article shall be applied by taking into account the equity capital.

Article 24

Fiscal depreciation

(1) Expenses incurred with the acquisition, production, construction, assembly, installation or improvement of depreciable fixed assets shall be recovered from a fiscal point of view by deducting the depreciation, according to the provisions of this Article.

(2) A depreciable fixed asset is considered to be any tangible asset that cumulatively meets the following conditions:

a) it is held and used in the production, supply of goods or services, for rental to third parties or for administrative purposes;

b) it has a value for tax purposes higher than the limit established by Government Decision, at the time it enters the taxpayer's patrimony;

c) it has a normal duration of use longer than one year.

For tangible assets used in batches, sets or forming a single body, batch or set, the value of the entire body, batch or set shall be taken into account in determining the depreciation. For components being part of a tangible asset, whose normal duration of use differs from the one of the resulting asset, the depreciation shall be determined separately for each component.

(3) There shall also be considered as depreciable fixed assets the following:

a) investments made in fixed assets that are subject to leasing, concession, location management contracts or other similar ones;

b) partly operated fixed assets for which the registration forms as tangible assets were not prepared; they shall be included in the groups in which they are to be registered at a value resulting from adding up the actual expenses incurred in obtaining them;

c) investments made in excavations to exploit useful mineral substances, as well as in opening and preparatory works for underground and surface extraction;

d) investments made in existing fixed assets as subsequent expenses incurred to improve the initial technical parameters, which lead to future economic benefits by increasing the value of the fixed asset;

e) self made investments resulting in new goods as those that are part of the public property, as well as in the development and modernization of the goods that are part of the public property;

f) land improvements.

(4) There shall not be considered as depreciable assets the following:

a) land, including woodland;

b) paintings and works of art;

c) goodwill;

d) lakes, swamps and ponds not being the result of an investment;

e) goods that are part of the public property and financed from budgetary sources;

f) any fixed asset that does not lose value over time as a result of its use, according to the secondary legislation;

g) self owned holiday houses, protocol houses, ships, aircraft, cruise ships, other than those used to obtain the income.

(5) *** Repealed

(6) The depreciation regime for a depreciable fixed asset shall be determined in accordance with the following rules:

a) for construction, the straight-line depreciation method shall be applied;

b) for technological equipment, machinery, tools and facilities, as well as for computers and their peripherals, the taxpayer may choose between the straight-line, decreasing or accelerated depreciation method;

c) for any other depreciable fixed asset, the taxpayer may choose between the straight-line or decreasing depreciation method.

(7) For straight-line depreciation method, the depreciation shall be determined by applying the straight-line depreciation rate to the value for tax purposes at the time the depreciable fixed asset enters the taxpayer's patrimony.

(8) For decreasing depreciation method, the depreciation shall be determined by multiplying the straight-line depreciation rates with one of the following coefficients:

a) 1.5, if the normal duration of use for the depreciable fixed asset is between 2 and 5 years;

b) 2, if the normal duration of use for the depreciable fixed asset is between 5 and 10 years;

c) 2.5, if the normal duration of use for the depreciable fixed asset is longer than 10 years.

(9) For accelerated depreciation method, the depreciation shall be determined as follows:

a) for the first year of operation, the depreciation shall not exceed 50% of the value for tax purposes registered at the time the fixed asset enters the taxpayer's patrimony;

b) for the next years of operation, the depreciation shall be determined by dividing the remaining depreciation value of the fixed asset to its remaining normal duration of use.

(10) Expenses incurred with the purchase of patents, copyright, licenses, trademarks or brands and other intangible assets recognized for accounting purposes, except for the set-up expenses and the goodwill, as well as development expenses that are considered intangible assets for accounting purposes, shall be recovered through straight-line depreciation deductions over the contract period or the duration of use,

as the case may be. Expenses incurred with the acquisition or production of software shall be recovered through straight-line depreciation deductions over a period of 3 years. For patents, the decreasing or accelerated depreciation method may also be used.

(11) The fiscal depreciation shall be determined as follows:

a) starting with the month following the one in which the depreciable fixed asset is put into operation;

b) for self made investment expenses incurred with fixed assets of public interest, over the normal duration of use, the remaining normal duration of use or the leasing or rental contract period, as the case may be;

c) for investment expenses incurred with fixed assets that are leased, rented or taken under location management by the one who made the investment, over the contract period or the normal duration of use, as the case may be;

d) for investment expenses incurred with land improvements, on a straight-line basis, over a period of 10 years;

e) the depreciation of buildings and constructions related to mines, salt mines with extraction in solution by wells, quarries, cast mining, for solid mineral substances and those related to oil mining, whose duration of use is limited by the duration of the reserves and which can not be used for other purposes after the reserves are drained, as well as of the investments made in excavations, shall be determined for each product depending on the exploitable reserve of useful mineral substance.

The depreciation for each product shall be recalculated as follows:

1. every 5 years for mines, quarries, oil mining, as well as for investment expenses incurred with excavations;

2. every 10 years for salt mines;

f) vehicles may be also depreciated based on the number of kilometers or the number of operating hours mentioned in the instruction books, for those purchased after 1 January 2004;

g) for job dwellings, the depreciation shall be fiscally deductible up to the level corresponding to the constructed area provided by the Dwellings Law;

h) only for cars used in accordance with the provisions of Article 21, paragraph (3), letter n).

(12) Taxpayers who have invested in depreciable fixed assets or in depreciable patents and who have deducted depreciation expenses representing 20% of their entry value, according to the law, on the date the fixed asset or patent is put into operation, until 30 April 2005, inclusive, are required to keep those depreciable fixed assets in their patrimony for at least half of their normal duration of use. When the provisions of this paragraph are not complied with, the profit tax shall be recalculated and interest and penalties for late payment shall be determined from the date that incentive was granted, according to the law.

(13) For investments made in industrial parks before 31 December 2006, an additional deduction from the taxable profit shall be granted, representing 20% of the value of the investments made in construction or construction rehabilitation, internal infrastructure and connectivity to public utilities, taking into account the law in force on the classification and normal duration of use for depreciable fixed assets. Taxpayers taking advantage of the incentives provided in paragraph (12) can not take advantage of the incentives provided in this paragraph.

(14) Expenses incurred with the discovery, exploration, development or other preparatory activities for the exploitation of natural resources shall be recovered in equal installments over a period of 5 years, starting with the month in which the

expenses are incurred. Expenses incurred with the purchase of any right to exploit natural resources shall be recovered as the natural resources are being exploited, by dividing the recovered value to the estimated total value of the resources.

(15) For depreciable fixed assets, the depreciation deductions shall be determined without taking into account the accounting depreciation. Gains or losses resulting from the sale or taking out from operation of such fixed assets shall be determined on the basis of their value for tax purposes reduced by the fiscal depreciation. For fixed assets with an accounting value shown in the balance on 31 December 2003, the depreciation shall be determined on the basis of the value still to be depreciated, over the remaining normal duration of use, by using the depreciation methods that were applied up to that date.

(15¹) In case there is a replacement of the constituent parts of the depreciable fixed assets/intangible assets with a value for tax purposes still to be depreciated, the expenses representing the value for tax purposes still to be depreciated of the replaced parts shall be considered as deductible expenses in calculating the taxable profit. The value for tax purposes still to be depreciated of the depreciable fixed assets/intangible assets shall be accordingly recalculated by reducing it with the value for tax purposes still to be depreciated of the replaced parts and by increasing it with the value for tax purposes of the new replaced parts, over the remaining normal duration of use.

(15²) In case there is a replacement of the constituent parts of the depreciable fixed assets/intangible assets made after the normal duration of use has ended, a new normal duration of use shall be established by a technical committee or by an independent technical expert in order to determine the fiscal depreciation.

(16) Taxpayers investing in fixed assets intended to prevent work accidents and occupational diseases, as well as to set up and operate medical chambers, may fully deduct their value in calculating the taxable profit on the date they are put into operation or may recover those expenses by depreciation deductions, according to the provisions of this Article.

(17) In case of a tangible asset that, on the date it enters the patrimony, has a value for tax purposes lower than the limit established by Government Decision, the taxpayer may choose between the deduction of the expenses incurred with the asset or the recovery of those expenses by depreciation deductions, according to the provisions of this Article.

(18) Expenses incurred with the purchase or production of containers or packaging moving between the taxpayer and the clients shall be recovered by depreciation deductions, using the straight-line method, over the normal duration of use established by the taxpayer who retains ownership over the containers or packaging.

(19) The Ministry of Public Finance shall develop the secondary legislation on the classification and the normal duration of use for fixed assets.

(20) *** Repealed

(21) For holders of oil agreements and their subcontractors conducting oil operations in maritime areas that include areas with a water depth that is greater than 100 meters, the depreciation of tangible and intangible assets related to the oil operations, whose duration of use is limited by the volume of the reserves, shall be determined for each product with a degree of use of 100%, depending on the exploitable reserve of useful mineral substance, over the period of the oil agreement. Expenses incurred with ongoing investments, with tangible and intangible assets related to oil operations, shall be reflected in the bookkeeping both in Romanian lei and EUR; these expenses, which are registered in the bookkeeping in Romanian lei,

shall be revaluated at the end of every fiscal year on the basis of the values registered in the bookkeeping in EUR, at the EUR/Romanian lei exchange rate communicated by the National Bank of Romania for the last day of every fiscal year.

(22) The provisions of the Law no. 15/1994 on the depreciation of the capital invested in tangible and intangible assets, republished, as subsequently amended and completed, shall not be applied in calculating the taxable profit, except for the provisions of Article 3, paragraph (2), letter a) and Article 8 of that law.

(23) For taxpayers applying accounting regulations in accordance with the IFRS, in case of non-current assets held for conducting the business that are turned into non-current assets held for sale and reclassified as non-current assets held for conducting the business, the value for tax purposes still to be depreciated shall be considered the value for tax purposes that was registered before the reclassification as non-current assets held for sale took place. The depreciation period is considered the remaining normal duration of use determined on the basis of the initial normal duration of use reduced by the duration in which it was classified as non-current asset held for sale. The fiscal depreciation shall be calculated starting with the month following the one in which it was reclassified as non-current asset held for conducting the business, by recalculating the fiscal depreciation rate.

Article 25

Leasing contracts

(1) In case of financial leasing, the lessee shall be treated as the owner for tax purposes, while in case of operational leasing, the lessor shall act as such.

The depreciation of an asset that is subject to a leasing contract shall be performed by the lessee in case of financial leasing and by the lessor in case of operational leasing, while the expenses are deductible, according to Article 24.

(2) In case of financial leasing, the lessee shall deduct the interest, while in case of operational leasing, the lessor shall deduct the rent (the leasing installment).

Article 25¹

Fiduciary contracts

(1) In case of fiduciary contracts concluded in accordance with the provisions of the Civil Code in which the settlor is also acting as the beneficiary, the following rules shall be applied:

a) the transfer of the trust table from the settlor to the trustee shall not be considered as a taxable transfer for the purposes of this Title;

b) the trustee shall keep a separate accounting for the trust table and shall inform the settlor on a quarterly basis, based on a settlement, of the income and expenses resulting from the administration of the trust table, according to the contract;

c) the value for tax purposes of the assets being part of the trust table taken over by the trustee shall be equal to their value for tax purposes at the time they were in the possession of the settlor;

d) the fiscal depreciation for any depreciable asset that is mentioned in the trust table shall continue to be determined in accordance with the provisions of Article 24, as would be applied to the person who had transferred the asset, if the transfer had not occurred.

(2) In case of fiduciary contracts concluded in accordance with the provisions of the Civil Code in which the trustee or a third person is acting as the beneficiary, the

expenses incurred with the transfer of the trust table from the settlor to the trustee shall be considered as non-deductible expenses.

Article 26

Fiscal losses

(1) The annual loss determined on the basis of the profit tax return shall be recovered from taxable profits obtained in the next 5 consecutive years. The recovery of the losses shall be made following the order in which they were registered, each time the profit tax has to be paid, according to the law in force during the year in which they were registered.

(2) The fiscal loss registered by taxpayers ceasing to exist following a division or merger shall not be recovered by the newly created taxpayers or by those taking over the patrimony of the acquired company, as the case may be.

(3) For foreign legal persons, the provisions of paragraph (1) shall be applied by taking into account only the income and expenses attributable to the permanent establishment in Romania.

(4) Taxpayers who were required to pay income tax and who have previously registered a fiscal loss shall be subject to the provisions of paragraph (1) or paragraph (5), respectively, starting from the date they have returned to the tax system covered by this Title. Such loss shall be recovered over the period between the date the fiscal loss was registered and the 5 years or 7 years limit, as the case may be.

(5) Notwithstanding the provisions of paragraph (1), the annual fiscal loss realized starting with 2009 and determined on the basis of the profit tax return shall be recovered from taxable profits obtained in the next 7 consecutive years. The recovery of the losses shall be made following the order in which they were registered, each time the profit tax has to be paid, according to the law in force during the year in which they were registered.

Article 27

Reorganizations, liquidations and other transfers of assets and securities

(1) For contributions made in assets to the registered capital of a legal person in exchange for securities to be held in such legal person, the following rules shall be applied:

a) the contributions shall not be treated as taxable transfers for the purposes of this Title;

b) the value for tax purposes of the assets received by the legal person shall be equal to the value for tax purposes of those assets at the time they were in the possession of the person investing the assets;

c) the value for tax purposes of the securities received by the person investing the assets shall be equal to the value for tax purposes of the assets invested by that person.

(2) The distribution of assets made by a Romanian legal person to its shareholders as a dividend or as a result of a liquidation operation, shall be treated as a taxable transfer, except for the cases provided in paragraph (3).

(3) The provisions of this Article shall be applied to the following reorganization operations, provided that they do not have as main objective the tax evasion or tax avoidance:

a) a merger between two or more Romanian legal persons, when the shareholders of any merging legal person are receiving securities to be held in the resulting legal person;

b) a division of a Romanian legal person into two or more Romanian legal persons, when the shareholders of the initial legal person will benefit from a proportional distribution of the securities to be held in the resulting legal persons;

c) a purchase made by a Romanian legal person of all the assets and liabilities being part of one or more economic activities performed by another Romanian legal person, only in exchange for securities;

d) a purchase made by a Romanian legal person of at least 50% of the securities of another Romanian legal person, in exchange for securities to be held in the legal person making the purchase and, if applicable, for a cash payment not exceeding 10% of the nominal value of the securities issued in exchange.

(4) For reorganization operations provided in paragraph (3), the following rules shall be applied:

a) the transfer of assets and liabilities shall not be treated as a taxable transfer for the purposes of this Title;

b) the exchange of securities held in a Romanian legal person for securities to be held in another Romanian legal person shall not be treated as a taxable transfer for the purposes of this Title and of Title III;

c) the distribution of securities relating to the division of a Romanian legal person shall not be treated as a dividend;

d) the value for tax purposes of an asset or liability, as provided in letter a), shall be equal for the person receiving such asset to the value for tax purposes of that asset at the time it was in the possession of the person who had transferred it;

e) the fiscal depreciation of any asset provided in letter a) shall continue to be determined in accordance with the provisions of Article 24, as would be applied to the person who had transferred the asset, if the transfer had not occurred;

f) the transfer of a provision or reserve shall not be considered as a reduction or cancellation of the provision or reserve, according to Article 22, paragraph (5), if some other taxpayer takes them over and holds them for the value they had before the transfer occurs;

g) the value for tax purposes of the securities provided in letter b), which are received by a person, shall be equal to the value for tax purposes of the securities that are transferred by that person;

h) the value for tax purposes of the securities provided in letter c), which were held prior to their distribution, shall be allocated between such securities and the distributed securities, in accordance with the market price of the securities, just after the distribution takes place.

(5) If a Romanian legal person holds at least 15% or 10%, respectively, starting with 2009, of the securities of another Romanian legal person that transfers assets and liabilities to the first-mentioned legal person, using one of the operations provided in paragraph (3), then the cancellation of those securities shall not be considered as a taxable transfer.

(6) *** Repealed

(7) For the purposes of this Article, the value for tax purposes of an asset, liability or equity shall be considered the value used to determine the depreciation and the gain or loss, within the meaning of the income tax or of the profit tax.

Article 27[^]1

Common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different member states of the European Union

(1) The provisions of this Article shall be applied after the date Romania will join the European Union.

(2) The provisions of this Article shall be applied to:

a) mergers, divisions, partial divisions, transfers of assets and exchanges of shares in which companies from two or more member states are involved;

b) transfer of the registered office of a European company from Romania to another member state, in accordance with the Council Regulation (EC) no. 2.157/2001 of 8 October 2001 on the statute for a European company (SE), and the Council Regulation (EC) no. 1.435/2003 of 22 July 2003 on the statute for a European cooperative society (SCE).

(3) For the purposes of this Article, the terms and expressions mentioned below shall have the following meaning:

1. merger - an operation whereby:

a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities;

b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities;

c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital;

2. division - an operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the receiving companies, and, if applicable, a cash payment not exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

3. partial division - an operation whereby a company transfers, without being dissolved, one or more branches of activity to one or more existing or new companies, leaving at least one branch of activity in the transferring company, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the receiving companies, and, if applicable, a cash payment not exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

4. assets and liabilities transferred - the assets and liabilities of the transferring company which, following a merger, division or partial division, are integrated into a permanent establishment of the receiving company, located in the member state where the transferring company is situated, and which are related to the profits obtained or the losses incurred when calculating the tax base;

5. transfer of assets - an operation whereby a company transfers, without being dissolved, all or one or more branches of its activity to another company, in exchange for the transfer of securities representing the capital of the receiving company;

6. exchange of shares - an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights or a majority of the securities in that company, or, holding such a majority, acquires a further holding, in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10% of the nominal value, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;

7. transferring company - the company transferring its assets and liabilities or transferring all or one or more branches of its activity;

8. receiving company - the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company;

9. acquired company - the company in which a holding is acquired by another company by means of an exchange of securities;

10. acquiring company - the company which acquires a holding in another company by means of an exchange of securities;

11. branch of activity - all the assets and liabilities of a division of a company which from an organizational point of view constitute an independent business, that is to say an entity capable of functioning by its own means;

12. company from a member state - any company that cumulatively meets the following conditions:

a) takes one of the forms of organization listed in the Annex that is an integral part of this Title;

b) according to the tax law of the member state, it is considered to be resident in that member state for tax purposes and, under the terms of a convention for the avoidance of double taxation concluded with a third state, it is not considered to be resident for tax purposes outside the European Union;

c) is subject to profit tax or to a similar tax, without the possibility of an option or exemption;

13. transfer of the registered office - an operation whereby a European company or a European cooperative society, without winding up or creating a new legal person, transfers its registered office from Romania to another member state.

(4) A merger or division shall not give rise to any taxable transfer for the difference between the market price of the assets and liabilities transferred and their value for tax purposes.

(5) The provisions of paragraph (4) shall be applied only if the receiving company is calculating the depreciation and any gain or loss related to the assets and liabilities transferred according to the rules that would have applied to the transferring company if the merger, division or partial division had not taken place.

(6) Where the constituted provisions and reserves have been previously deducted from the tax base by the transferring company and provided that they are not derived from permanent establishments abroad, those provisions and reserves may be carried over, under the same deduction terms, by the permanent establishment of the receiving company, located in Romania, the receiving company thereby assuming the rights and obligations of the transferring company.

(7) As regards the operations mentioned in paragraph (2), if the transferring company registers a fiscal loss determined in accordance with this Title, the loss shall not be

recovered by the permanent establishment of the receiving company, located in Romania.

(8) Where a receiving company has a holding in the capital of the transferring company, any gains accruing to the receiving company on the cancellation of its holding shall not be liable to any taxation, provided that the holding of the receiving company in the capital of the transferring company is higher than 15% or 10%, respectively, starting with 1 January 2009.

(9) For the exchange of shares the following rules shall be applied:

a) on a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxable transfer under this Title and Title III;

b) on a partial division, the allotment of securities of the transferring company representing the capital of the receiving company shall not, of itself, give rise to any taxable transfer under this Title and Title III;

c) the provisions of letter a) shall apply only if the shareholder does not attribute to the securities received a value for tax purposes higher than the value they had before the merger, division or exchange of shares;

d) the provisions of letter b) shall apply only if the shareholder does not attribute to the securities received and to those held in the transferring company, a value for tax purposes higher than the value the securities held in the transferring company had before the partial division;

e) the profit or income arising from a subsequent transfer of securities shall be subject to taxation according to the provisions of this Title or of Title III, as the case may be;

f) the expression "value for tax purposes" means the value used to calculate the income or losses in order to determine the taxable income or the contribution of a shareholder to the capital of a company.

(10) The provisions of paragraphs (4) to (9) shall also be applied to the transfer of assets.

(10¹) Where the assets and liabilities of a transferring company from Romania, which are transferred within a merger, division, partial division or transfer of assets, also include the assets and liabilities of a permanent establishment located in another member state, including the member state in which the receiving company is resident, the right to tax that permanent establishment belongs to the member state in which the receiving company is located.

(10²) Rules applicable to the transfer of the registered office of a European company or a European cooperative society:

a) where a European company or a European cooperative society transfers its registered office from Romania to another member state, this transfer of the registered office shall not, of itself, give rise to any taxable transfer for the capital gains calculated as a difference between the market price of the assets and liabilities transferred and their value for tax purposes, for those assets and liabilities of the European company or of the European cooperative society that are effectively connected with a permanent establishment of the European company or of the European cooperative society, located in Romania, and that are generating the profits or losses taken into account for tax purposes;

b) the transfer shall not be subject to taxation only if the European companies or the European cooperative societies are calculating the depreciation and any gains or

losses related to the assets and liabilities that are effectively connected with a permanent establishment as if the transfer of the registered office had not taken place;

c) provisions or reserves that have been deducted from the tax base by the European companies or the European cooperative societies before the transfer of the registered office took place and that are not derived by permanent establishments abroad, may be carried over, under the same deduction terms, by the permanent establishment of the European company or of the European cooperative society, located in Romania;

d) as regards the operations mentioned in paragraph (2), letter b), if a European company or a European cooperative society registers a fiscal loss determined in accordance with this Title, the loss shall not be recovered by the permanent establishment of the European company or of the European cooperative society, located in Romania;

e) the transfer of the registered office of the European companies or of the European cooperative societies shall not, of itself, give rise to any taxation of the income, profits or capital gains of the shareholders.

(11) The provisions of this Article shall not be applied where it appears that the merger, division, partial division, transfer of assets or exchange of shares:

a) has as its principal objective or as one of its principal objectives the tax evasion or the tax avoidance. The fact that one of the operations referred to in paragraph (2) is not carried out for valid commercial reasons such as the restructuring or rationalization of the activities of the companies participating in the operation may constitute a presumption that the operation has as its principal objective or as one of its principal objectives the tax evasion or the tax avoidance;

b) results in a company, whether participating in the operation or not, which is no longer fulfilling the necessary conditions for the representation of the employees in the governing bodies of the company according to the arrangements that were in force prior to that operation. This provision shall be applied to the extent that the companies referred to in this Article are not applying EU provisions containing equivalent rules regarding the representation of the employees in the governing bodies of a company.

(12) The provisions of this Article are transposing the provisions of the Directive no. 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states, as amended by the Directive no. 2005/19/EC.

Article 28

Associations without legal personality

(1) For an association without legal personality, the registered income and expenses shall be attributable to each partner, based on the participation rate in the association.

(2) Any association without legal personality of foreign legal persons, conducting its business in Romania, shall designate one of the partners to fulfill the obligations on the part of each partner, in accordance with this Title. The designated person shall be responsible for:

a) registering the association to the competent tax authority, before it starts to conduct any business;

b) managing the bookkeeping of the association;

c) paying the taxes on behalf of the partners, in accordance with the provisions of Article 34, paragraph (5);

d) filing a quarterly tax return to the competent tax authority containing information on the part of the income and expenses of the association that is attributable to each partner, as well as the tax that was paid to the budget on behalf of each partner;

e) providing information, in writing, to each partner, on the part of the income and expenses of the association that is attributable to it, as well as the tax that was paid to the budget on its behalf.

(3) For an association without legal personality of two or more Romanian legal persons, the registered income and expenses shall be attributable to each partner, based on the participation rate in the association.

(4) For an association without legal personality made with a foreign legal person and/or with non-resident individuals, as well as with Romanian individuals, the Romanian legal person shall fulfill the obligations on the part of each partner, in accordance with this Title.

Article 28¹

General rules applicable to legal persons with the registered office in Romania, established according to the European legislation

The provisions relating to the Romanian legal person of Article 13, letters d) and e), Article 14, letters d) and e), Article 20, letter a), Article 20¹, paragraphs (1) to (3), Article 23, paragraph (7), Article 27, paragraphs (2) to (5), Article 28, paragraphs (3) and (4), Article 30, paragraphs (1), (1¹), (3) and (4), Article 31, paragraphs (1) and (3), as well as of Article 36 shall be also applied, under the same terms and conditions, to legal persons with the registered office in Romania, established according to the European legislation.

Article 28²

Associations with legal personality established according to the legislation of another state

(1) For an association with legal personality registered in another state and made of foreign legal persons and/or non-resident individuals and/or resident individuals and/or Romanian legal persons, which is conducting its business in Romania, the provisions of Article 28 shall be applied.

(2) Where a Romanian legal person is participating in an association with legal personality registered in another state, it shall determine the taxable profit taking into account the income and expenses that are attributable to it, based on the participation rate in the association.

CHAPTER III

International tax issues

Article 29

Income of a permanent establishment

(1) Foreign legal persons conducting a business in Romania through a permanent establishment are required to pay the profit tax for the taxable profit that is attributable to the permanent establishment.

(2) The taxable profit shall be determined in accordance with the rules provided in Chapter II of this Title, under the following conditions:

- a) only the income attributable to the permanent establishment shall be included in the taxable income;
- b) only the expenses incurred for obtaining such income shall be included in the deductible expenses.

(3) The taxable profit of the permanent establishment shall be determined by treating it as a separate person and by using the transfer pricing rules in calculating the market price of a transfer made between the foreign legal person and its permanent establishment. Where the permanent establishment does not have an invoice for the expenses allocated to it by its head office, the other supporting documents shall include evidence of the fact that the costs were actually incurred by and reasonably allocated to the permanent establishment, by using the transfer pricing rules.

(4) Before starting to conduct any business in Romania through a permanent establishment, the legal representative of the foreign legal person mentioned in paragraph (1) is required to register the permanent establishment to the competent tax authority.

Article 30

Income derived by foreign legal persons from immovable property and from the sale/assignment of securities

(1) Foreign legal persons deriving income from immovable property located in Romania or from the sale/assignment of securities held in a Romanian legal person are required to pay the profit tax for the taxable profit related to such income.

(1[^]1) Between 1 January 2009 and 31 December 2009, inclusively, the profit obtained by foreign legal persons from the trading of securities held in a Romanian legal person, on a market that is authorized and supervised by the National Securities Commission, shall not be taxed.

(2) The income from immovable property located in Romania shall include the following:

- a) income derived from the lease of or granting the right to use immovable property located in Romania;
- b) gains derived from the sale/assignment of the ownership or of any other rights related to immovable property located in Romania;
- c) gains derived from the sale/assignment of securities held in a legal person, provided that at least 50% of the value of the fixed assets of the legal person is related, either directly or through various legal persons, to immovable property located in Romania;
- d) income derived from the exploitation of natural resources located in Romania, including gains derived from the sale/assignment of any other right related to such natural resources.

(3) Any foreign legal person deriving income from immovable property located in Romania or from the sale/assignment of securities held in a Romanian legal person is required to file a tax return and to pay the profit tax according to Articles 34 and 35. Any foreign legal person may designate a representative to meet such obligations.

(4) Notwithstanding the provisions of paragraph (3), for the income mentioned in paragraph (1) and obtained by foreign legal persons, the obligation to calculate, withhold, file a tax return and pay the profit tax rests with the buyer, provided that the buyer is a Romanian legal person or a foreign legal person that has a permanent

establishment registered for tax purposes in Romania at the time the transaction takes place.

(5) *** Repealed

(6) The provisions of Article 119 shall be applied to any person required to withhold tax, in accordance with this Article.

Article 31

Tax credit

(1) Where a Romanian legal person derives income from a foreign state through a permanent establishment or income subject to withholding tax and the income is taxed both in Romania and in the foreign state, then the tax paid to the foreign state, either directly or indirectly by withholding and payment made by another person, shall be deducted from the profit tax determined according to the provisions of this Title.

(2) The deduction related to the taxes paid to a foreign state during a fiscal year may not exceed the profit tax calculated by applying the profit tax rate provided in Article 17, paragraph (1) to the taxable profit derived in the foreign state and determined in accordance with the rules provided in this Title, or to the income derived in the foreign state.

(3) The tax paid to a foreign state shall only be deducted if the provisions of the convention for the avoidance of double taxation concluded between Romania and the foreign state are applied and if the Romanian legal person provides appropriate documentation, according to the law, to reflect the fact that the tax was paid to the foreign state.

(4) *** Repealed

(5) *** Repealed

Article 32

External fiscal losses

Any loss realized through a permanent establishment located in a non-member state of the European Union or of the European Free Trade Association, or in a state that does not have a convention for the avoidance of double taxation concluded with Romania, shall only be deducted from the income derived by such permanent establishment. In such case, the losses realized through the permanent establishment shall only be deducted from such income, separately, for each source of income. The uncovered losses shall be carried forward and recovered in the next 5 consecutive fiscal years.

CHAPTER IV * Repealed**

Article 33 *** Repealed

CHAPTER V

Payment of tax and filing the tax return

Article 34

Declaration and payment of the profit tax

(1) Declaration and payment of the profit tax, except as provided in this Article, shall be made on a quarterly basis by the 25th day, inclusively, of the first month following the end of quarters I to III. The determination and payment of the profit tax for a fiscal year shall be made by the time limit provided in Article 35 for the filing of the profit tax return.

(2) Starting with 1 January 2013, taxpayers, other than those provided in paragraphs (4) and (5), may choose to declare and to pay the profit tax on an annual basis by advance payments made on a quarterly basis. The time limit for the payment of the annual tax shall be the time limit provided in Article 35 for the filing of the profit tax return.

(3) The choosing of the system for the declaration and payment of the profit tax on an annual basis shall be made at the beginning of the fiscal year for which the application of the provisions of paragraph (2) is requested. The choice made is mandatory for at least 2 consecutive fiscal years. The giving up on the system for the declaration and payment of the tax on an annual basis shall be made at the beginning of the fiscal year for which the application of the provisions of paragraph (1) is requested. Taxpayers are required to notify the local tax authorities on the change of the system for the declaration and payment of the profit tax on an annual/quarterly basis, in accordance with the provisions of the Fiscal Procedure Code, by 31 January, inclusively, of the fiscal year in question.

(4) Taxpayers being banking companies that are Romanian legal persons and branches in Romania of banks that are foreign legal persons are required to declare and to pay the profit tax on an annual basis by advance payments made on a quarterly basis. The time limit for the payment of the annual tax shall be the time limit provided in Article 35 for the filing of the profit tax return.

(5) The following taxpayers are required to declare and to pay the profit tax as follows:

a) non-profit organizations are required to declare and to pay the profit tax on an annual basis by 25 February, inclusively, of the year following the one for which the tax is calculated;

b) taxpayers deriving most of the income from the cultivation of cereals and technical plants, fruit trees and vineyards are required to declare and to pay the profit tax on an annual basis by 25 February, inclusively, of the year following the one for which the tax is calculated;

c) taxpayers mentioned in Article 13, letters c) to e) are required to declare and to pay the profit tax on a quarterly basis, in accordance with paragraph (1).

(6) Taxpayers, other than those mentioned in paragraphs (4) and (5), which were in the previous year in one of the following situations:

a) being newly-established;

b) registering a fiscal loss at the end of the previous fiscal year;

c) going through a temporary inactivity or self-declaring that there is no activity carried out at the registered office/secondary locations, situations that are mentioned according to the law in the trade register or the register kept by the competent courts, as the case may be;

d) paying income tax on micro-enterprises, in the year for which the profit tax is due, shall apply the declaration and payment system mentioned in paragraph (1). For the purposes of this paragraph, there shall not be considered as newly-established those taxpayers that are registered as a result of reorganization operations made under the law.

(7) Notwithstanding the provisions of paragraph (8), the newly-established taxpayers mentioned in paragraph (4), which are established in the previous year or are registering a fiscal loss at the end of the previous fiscal year, shall make advance payments of the profit tax in an amount calculated by applying the tax rate to the accounting profit registered in the period for which the advance payment is made.

(8) Taxpayers applying the system for the declaration and payment of the profit tax on an annual basis by advance payments made on a quarterly basis shall determine the advance payments made on a quarterly basis in an amount equal to a quarter of the profit tax that is due for the previous year, updated by the consumer price index and estimated when the initial budget of the year for which the advance payments are made is drafted, by the 25th day, inclusively, of the month following the quarter for which the payment is made. The profit tax for the previous year, on the basis of which the advance payments made on a quarterly basis are determined, shall be the profit tax that is due according to the profit tax return, without taking into account the advance payments made in that year.

(8[^]1) For taxpayers applying accounting regulations in accordance with the IFRS, the advance payments made on a quarterly basis shall be made in an amount equal to a quarter of the profit tax for the previous year determined in accordance with paragraph (8), without taking into account the influence derived from applying the provisions of Article 19[^]3, including the fiscal years in which the amounts registered in the debit balance of the account "retained earnings of specific provisions" are deducted.

(9) Notwithstanding the provisions of paragraph (8), taxpayers applying the system for the declaration and payment of the profit tax mentioned in paragraph (2) and which are registering a fiscal loss in the first year of the mandatory period mentioned in paragraph (3), shall make advance payments of the profit tax in an amount calculated by applying the tax rate to the accounting profit registered in the period for which the advance payment is made.

(10) For taxpayers applying the system for the declaration and payment of the profit tax mentioned in paragraph (2) and which have been exempted from the payment of the profit tax in the previous year, according to the law, while they are no longer benefiting from those tax incentives in the year for which the advance payments are calculated and made, the profit tax for the previous year, on the basis of which the advance payments are determined, shall be the profit tax calculated in accordance with the profit tax return for the previous year, taking also into account the exempted profit tax.

(11) For the following reorganization operations made under the law, the taxpayers applying the system for the declaration and payment of the profit tax on an annual basis by advance payments made on a quarterly basis shall determine the profit tax for the previous year, as a basis for calculating the advance payments, in accordance with the following rules:

a) taxpayers absorbing by merger one or more Romanian legal persons, starting with the quarter in which those operations are having effect, according to the law, shall add the profit tax that is due by them for the previous year to the profit tax that is due for the same year by the other transferring companies;

b) taxpayers established following a merger of two or more Romanian legal persons shall add up the profit tax that is due for the previous year by the transferring companies. If all transferring companies are registering a fiscal loss in the previous year, the newly-established taxpayers shall determine the advance payments according to the provisions of paragraphs (7) and (9);

c) taxpayers established following a division of a Romanian legal person shall divide the profit tax that is due for the previous year by the transferring company by reference to the value of the assets and liabilities transferred, based on the project drafted according to the law. If the transferring company is registering a fiscal loss in the previous year, the newly-established taxpayers shall determine the advance payments according to the provisions of paragraphs (7) and (9);

d) taxpayers receiving assets and liabilities following any division operations of a Romanian legal person, starting with the quarter in which those operations are having effect, according to the law, shall add the profit tax that is due by them for the previous year to the profit tax that is due for the previous year by the transferring company, recalculated by reference to the value of the assets and liabilities transferred, based on the project drafted according to the law;

e) taxpayers transferring a part of the patrimony to one or more receiving companies, according to the law, starting with the quarter in which those operations are having effect, according to the law, shall recalculate the profit tax that is due for the previous year by reference to the value of the assets and liabilities held by the legal person that is transferring the assets.

(12) Taxpayers applying the system for the declaration and payment of the profit tax on an annual basis by advance payments made on a quarterly basis and which during the year are turned into permanent establishments of foreign legal persons as a result of the operations mentioned in Article 27¹, starting with the quarter in which those operations are having effect, according to the law, shall apply the following rules in order to determine the advance payments that are due:

a) in case of a merger by absorption, the permanent establishment shall determine the advance payments on the basis of the profit tax that is due for the previous year by the transferring company;

b) in case of a division, partial division and transfer of assets, the permanent establishments shall determine the advance payments on the basis of the profit tax that is due for the previous year by the transferring company, recalculated for each permanent establishment by reference to the value of the assets and liabilities transferred, according to the law. Transferring companies not ceasing to exist following such operation, starting with the quarter in which those operations are having effect, according to the law, shall adjust the the advance payments that are due according to the rules mentioned in paragraph (11), letter e).

(13) Taxpayers applying the system for the declaration and payment of the profit tax on an annual basis by advance payments made on a quarterly basis and which are involved in cross-border operations, other than those mentioned in paragraph (12), shall apply the following rules in order to determine the profit tax for the previous year, on the basis of which the advance payments are calculated:

a) for taxpayers absorbing one or more foreign legal persons, starting with the quarter in which those operations are having effect, according to the law, the profit tax for the previous year, on the basis of which the advance payments are calculated, shall be the profit tax that is due by the acquiring company in the fiscal year preceding the one in which the operation is performed;

b) taxpayers absorbing at least one Romanian legal person and at least one foreign legal person, starting with the quarter in which that operation is having effect, according to the law, shall add the profit tax that is due by them for the previous year to the profit tax that is due for the same year by the other Romanian transferring companies;

c) taxpayers established following a merger between one or more Romanian legal persons and one or more foreign legal persons shall add up the profit tax that is due by the Romanian transferring companies. If all Romanian transferring companies are registering a fiscal loss in the previous year, the newly-established taxpayer shall determine the advance payments according to the provisions of paragraphs (7) and (9).

(14) The legal persons that during the fiscal year are dissolved with liquidation, according to the law, are required to fill the annual profit tax return and to pay the tax by the time the financial statements are submitted to the competent tax authority within the National Agency for Fiscal Administration.

(15) The legal persons that during the fiscal year are dissolved without liquidation are required to fill the annual profit tax return and to pay the tax by the end of the taxable period.

(16) The tax liabilities covered by this Title shall be revenues of the state budget.

(17) Notwithstanding the provisions of paragraph (16), the profit tax, interest/penalties for late payment and fines that are due by self-managed institutions within the local councils and county councils, as well as those that are due by companies having as main shareholders the local councils and/or county councils, which are carrying out projects with financial assistance from the European Union or from other international bodies, based on loan agreements/contracts that are ratified and approved by law, shall be revenues of the local budgets in question until the end of the fiscal year in which the project that is subject to the loan agreement/contract is finalized.

(18) In order to apply the system for the declaration and payment of the profit tax on an annual basis by advance payments made on a quarterly basis, the consumer price index required for updating the advance payments shall be communicated by 15 April of the fiscal year for which the advance payments are made, by Order of the Minister of Public Finance.

Article 35

Filing the profit tax return

(1) Taxpayers are required to fill an annual profit tax return by 25 March, inclusively, of the next year, except for the taxpayers mentioned in Article 34, paragraph (5), letters a) and b), and paragraphs (14) and (15), which are required to fill the annual profit tax return by the time limits mentioned in those paragraphs.

(2) Taxpayers mentioned in Article 13, letters c) and e) are also required to submit the declaration on the distribution of the income and expenses between shareholders.

CHAPTER VI

Tax on dividends

Article 36

Declaration, withholding and payment of the tax on dividends

(1) A Romanian legal person distributing/paying dividends to a Romanian legal person is required to withhold, to declare and to pay the tax on dividends to the state budget, as provided in this Article.

(2) The tax on dividends shall be determined by applying a 16% tax rate on the gross dividend distributed/paid to a Romanian legal person.

(3) The tax on dividends shall be declared and paid to the state budget by the 25th day, inclusively, of the month following the one in which the dividend is distributed/paid. Where the distributed dividends have not been paid by the end of the year in which the annual financial statements are approved, the relevant tax on dividends shall be paid by 25 January of the next year.

(4) The provisions of this Article shall not be applied for dividends paid by a Romanian legal person to another Romanian legal person, provided that the beneficial owner of the dividends holds at the time the dividends are paid at least 10% of the securities of the other legal person for a period of 2 years ending on the date they are paid, inclusively.

(4[^]1) The provisions of this Article shall not be applied for dividends distributed/paid by a Romanian legal person to:

a) optional pension funds and privately managed pension funds;

b) public administration bodies exercising under the law the rights and obligations resulting from the shareholder position that the state is having in those Romanian legal persons.

(5) The tax rate on dividends mentioned in paragraph (2) shall also be applied for amounts distributed/paid to open investment funds that are designated as such according to the regulations on capital market.

CHAPTER VII

Transitional and final provisions

Article 37

Fiscal losses from exemption periods

Any net fiscal loss arising during the period in which the taxpayer has been exempted from the payment of the profit tax may be recovered from future taxable profits according to Article 26. The net fiscal loss shall be determined as the difference between the total fiscal losses registered in the exemption period and the total taxable profit registered in the same period.

Article 37[^]1

Losses realized through a permanent establishment from abroad

(1) Losses realized through a permanent establishment from abroad, which are registered until 31 December 2009, inclusively, shall be recovered under the provisions in force by that date.

(2) For 2010, losses realized through a permanent establishment located in a member state of the European Union or of the European Free Trade Association, or in a state that has a convention for the avoidance of double taxation concluded with Romania, shall be determined by taking into account the income and expenses registered since the beginning of the fiscal year.

Article 38

Transitional provisions

(1) For legal persons that have obtained a permanent certificate of investor in a disadvantaged area before 1 July 2003, the tax exemption for the profit related to new investments shall continue to be applied during the existence of the disadvantaged area.

(2) Taxpayers registering expenses incurred with investments before 1 July 2002, according to the Government Ordinance no. 27/1996 on the granting of incentives to persons residing or working in some localities in the Apuseni Mountains and in the "Danube Delta" Biosphere Reservation, republished, as subsequently amended, and who continue to invest according to the mentioned Ordinance, shall continue to deduct from the taxable profit the expenses that are separately registered and incurred with such investments until 31 December 2006.

(3) Taxpayers operating in the free zone under a license and who have invested in the free zone, before 1 July 2002, in depreciable tangible assets used in the manufacturing industry, in an amount equal to at least 1 million US dollars, shall continue to be exempted from the payment of the profit tax until 31 December 2006. The provisions of this paragraph shall no longer be applied if there are any changes made to the taxpayer's shareholding structure. For the purposes of this paragraph, a change in the shareholding for listed companies means a change in the shareholding that is higher than 25% of the number of shares, during a calendar year.

(4) Except for the provisions of paragraph (3), taxpayers deriving income from activities carried out under a license in a free zone are required to pay a 5% profit tax rate for the taxable profit related to such income until 31 December 2004.

(5) Taxpayers taking advantage of the incentives mentioned in paragraphs (1) to (4) shall not benefit from the accelerated depreciation or from the deduction mentioned in Article 24, paragraph (12).

(6) Protected units for people with disabilities, as defined in the Government Emergency Ordinance no. 102/1999 on special protection and employment of people with disabilities, approved with amendments and additions by Law no. 519/2002, as subsequently amended, shall be exempted from the payment of profit tax, provided that at least 75% of the amounts obtained following the exemption are reinvested in order to purchase technological equipment, machinery, tools, facilities and/or to equip the protected working premises. The exemption from the payment of the profit tax shall be applied until 31 December 2006.

(7) Taxpayers directly involved in the production of cinematographic films, registered as such in the Cinematographic Register, shall benefit until 31 December 2006 from:

a) the exemption from the payment of the profit tax for the part of the gross profit that is reinvested in cinematography;

b) the reduction of the profit tax by 20%, provided that new jobs are created and an increase by at least 10% of the number of employees as compared to the previous financial year is made.

(8) The national company "Nuclearelectrica" - S.A. shall be exempted from the payment of the profit tax until 31 December 2010, provided that the profit is solely used to finance the investments made in the Cernavodă Nuclear Power Plant - Unit 2, according to the law.

(9) The company "Automobile Dacia" - S.A. shall be exempted from the payment of the profit tax until 31 December 2006.

(10) The company "Sidex" - S.A. shall be exempted from the payment of the profit tax until 31 December 2004.

(11) The national company "Henri Coandă International Airport - Otopeni" - S.A. shall be exempted from the payment of the profit tax until 31 December 2006.

(12) In calculating the taxable profit, the following income shall not be taxed until 31 December 2006:

a) income derived from the activities carried out in relation to the Cernavodă Nuclear Power Plant - Unit 2 until it is operated;

b) income derived from the application of an invention that is patented in Romania, including income from the manufacturing of the product or from the application of the process, for a period of 5 years from the first application, which are calculated from the date the application is started and which are included in the period of validity of the patent, according to the law;

c) income derived from apiculture.

(13) For direct investments with a significant impact on the economy, which are made until 31 December 2006, according to the law, taxpayers may deduct an additional rate of 20% of their value. The deduction shall be calculated for the month in which the investment is made. In case there is a fiscal loss registered, it shall be recovered according to the provisions of Article 26. For the investments made, an accelerated depreciation may be calculated, except for the investments made in buildings. Taxpayers taking advantage of the incentives mentioned in this paragraph shall not apply the provisions of Article 24, paragraph (12).

(14) The tax incentives related to the profit tax, which are stipulated by the laws mentioned in this Article, as well as those arising from other laws that are governing their application, shall remain in force until the time limits and under the terms stipulated by such laws.

ANNEX 1

LIST OF COMPANIES

referred to in Article 27¹, paragraph (3), section 12, letter a)

a) companies incorporated under Council Regulation (EC) no. 2.157/2001 of 8 October 2001 on the statute for a European company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European company with regard to the involvement of employees, and cooperative societies incorporated under Council Regulation (EC) no. 1.435/2003 of 22 July 2003 on the statute for a European cooperative society (SCE) and Council Directive 2003/72/EC of 22 July 2003 supplementing the statute for a European cooperative society with regard to the involvement of employees;

b) companies under Belgian law known as "société anonyme"/"naamloze vennootschap", "société en commandite par actions"/"commanditaire vennootschap op aandelen", "société privée à responsabilité limitée"/"besloten vennootschap met beperkte aansprakelijkheid", "société coopérative à responsabilité limitée"/"coöperatieve vennootschap met beperkte aansprakelijkheid", "société coopérative à responsabilité illimitée"/"coöperatieve vennootschap met onbeperkte aansprakelijkheid", "société en nom collectif"/"vennootschap onder firma", "société en commandite simple"/"gewone commanditaire vennootschap", public undertakings which have adopted one of the above-mentioned legal forms, and other companies constituted under Belgian law subject to the Belgian corporate tax;

- c) companies under Czech law known as “akciová společnost”, “společnost s ručením omezeným”;
- d) companies under Danish law known as “aktieselskab” and “anpartsselskab”; other companies subject to tax under the Corporation Tax Act, insofar as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to “aktieselskaber”;
- e) companies under German law known as “Aktiengesellschaft”, “Kommanditgesellschaft auf Aktien”, “Gesellschaft mit beschränkter Haftung”, “Versicherungsverein auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaft”, “Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts”, and other companies constituted under German law subject to German corporate tax;
- f) companies under Estonian law known as “täisühing”, “usaldusühing”, “osaühing”, “aktsiaselts”, “tulundusühistu”;
- g) companies under Greek law known as “anonume etaireia”, “etaireia periorismenes eutuns (E.P.E.)”;
- h) companies under Spanish law known as “sociedad anónima”, “sociedad comanditaria por acciones”, “sociedad de responsabilidad limitada”, and those public law bodies which operate under private law;
- i) companies under French law known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “sociétés par actions simplifiées”, “sociétés d’assurances mutuelles”, “caisses d’épargne et de prévoyance”, “sociétés civiles” that are automatically subject to corporation tax, “coopératives”, “unions de coopératives”, industrial and commercial public establishments and undertakings, and other companies constituted under French law subject to the French corporate tax;
- j) companies incorporated or existing under Irish laws, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;
- k) companies under Italian law known as “società per azioni”, “società in accomandita per azioni”, “società a responsabilità limitata”, “società cooperative”, “società di mutua assicurazione”, and public and private entities whose activity is wholly or principally commercial;
- l) companies under Cypriot law known as “etaireies” and subject to the corporate tax;
- m) companies under Latvian law known as “akciju sabiedrība”, “sabiedrība ar ierobežotu atbildību”;
- n) companies incorporated under the law of Lithuania;
- o) companies under Luxembourg law known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “société coopérative”, “société coopérative organisée comme une société anonyme”, “association d’assurances mutuelles”, “association d’épargne-pension”, “entreprise de nature commerciale, industrielle ou minière de l’État, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public”, and other companies constituted under Luxembourg law subject to the Luxembourg corporate tax;
- p) companies under Hungarian law known as “közkereseti társaság”, “betéti társaság”, “közös vállalat”, “korlátolt felelősségű társaság”, “részvénytársaság”, “egyesülés”, “közhasznú társaság”, “szövetkezet”;

- q) companies under Maltese law known as “Kumpaniji ta’ Responsabilita Limitata”, “Soċjetajiet en commandite li l-kapital tagħhom maqsum f’azzjonijiet”;
- r) companies under Dutch law known as “naamloze vennootschap”, “besloten vennootschap met beperkte aansprakelijkheid”, “Open commanditaire vennootschap”, “Coöperatie”, “onderlinge waarborgmaatschappij”, “Fonds voor gemene rekening”, “vereniging op coöperatieve grondslag”, “vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt”, and other companies constituted under Dutch law subject to the Dutch corporate tax;
- s) companies under Austrian law known as “Aktiengesellschaft”, “Gesellschaft mit beschränkter Haftung”, “Erwerbs- und Wirtschaftsgenossenschaften”;
- ś) companies under Polish law known as “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”;
- t) commercial companies or civil law companies having a commercial form, as well as other legal persons carrying on commercial or industrial activities, which are incorporated under Portuguese law;
- †) companies under Slovenian law known as “delniška družba”, “komanditna družba”, “družba z omejeno odgovornostjo”;
- u) companies under Slovak law known as “akciová spoločnosť”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť”;
- v) companies under Finnish law known as “osakeyhtiö”/“aktiebolag”, “osuuskunta”/“andelslag”, “säästöpankki”/“sparbank” and “vakuutusyhtiö”/“försäkringsbolag”;
- w) companies under Swedish law known as “aktiebolag”, “försäkringsaktiebolag”, “ekonomiska föreningar”, “sparbanker”, “ömsesidiga försäkringsbolag”;
- x) companies incorporated under the law of the United Kingdom of Great Britain and Northern Ireland.

TITLE III

Income Tax

CHAPTER I

General provisions

ART. 39

Taxpayers

The following persons are liable to pay tax according to the present title and are hereafter referred to as taxpayers:

- a) resident individuals;
- b) non-resident individuals carrying out an independent activity through a permanent establishment in Romania;
- c) non-resident individuals carrying out dependent activities in Romania;
- d) non-resident individuals deriving incomes provided in art. 89.

ART. 40

Scope of application of tax

(1) The tax provided in the present title, hereinafter referred to as income tax, shall apply to the following incomes:

- a) in case of Romanian resident individuals, domiciled in Romania, to the incomes derived from any source, both from Romania and from outside Romania
- b) in case of resident individuals, other than those provided at letter a), to incomes derived from any source both from Romania and from outside Romania, starting with January 1st of the calendar year following the year in which they became residents in Romania;
- c) in case of non-resident individuals carrying out an independent activity through a permanent establishment in Romania, to the net income attributable to the permanent establishment;
- d) in case of non-resident individuals carrying out a dependent activity in Romania, to the net salary income from this dependent activity;
- e) in case of non-resident individuals deriving incomes provided in article 39 letter d), to the income determined according to the rules provided in the present title, which correspond to the respective category of income.

(2) Non-resident individuals fulfilling the residency conditions provided for at article 7 para (1) point 23 letters b) or c) shall be liable to income tax for the incomes derived from any source, both from Romania and from outside Romania, starting with January 1st of the calendar year following the year in which they become residents in Romania.

3) It would be excepted from the provisions of paragraph (2) individuals who prove they are residents of countries with whom Romania has concluded double taxation agreements, for which provisions in the Conventions are applicable.

(4) Except individuals mentioned at art. 40 para. (3), during the calendar year in which the non-resident individuals fulfill the residency conditions, as provided for at

article 7, para (1) point 23 letter. b) or c), they are liable to tax only for the incomes derived from Romania.

(5) A person is considered resident or non-resident for the entire calendar year. Change of residency during the calendar year is not permitted.

6) Residents of the states with whom Romania has concluded double taxation agreements must prove their tax residency with a certificate of residence issued by the competent tax authority of the foreign state or with another document issued by another authority other than the fiscal authority, which is responsible for certifying the residence under national law of that State. This certificate / document is valid for the year/s for which it was issued.

(7) A Romanian resident individual, domiciled in Romania, which proves the change of residency in a state with whom Romania has not concluded a double taxation agreement is still liable to pay tax on the incomes derived from all sources, both from Romania and from abroad, for the calendar year in which the change of residency occurred, and as well for the next 3 calendar years.

ART. 41

Categories of incomes which are subject to income tax

The categories of incomes which are subject to the income tax, according to the provisions of the present title, are the following:

- a) incomes from independent activities, defined according to art. 46;
- b) incomes from salaries, defined according to art. 55;
- c) incomes from granting the use of goods, defined according to art. 61;
- d) incomes from investments, defined according to art. 65;
- e) incomes from pensions, defined according to art. 68;
- f) incomes from agricultural activities, defined according to art. 71;
- g) incomes from prizes and from gambling, defined according to art. 75;
- h) incomes from the transfer of immovable properties, according to Article 77¹;
- i) incomes from other sources, defined according to art. 78 and art 79¹.

ART. 42

Non-taxable income

For income tax purposes, the following incomes are not taxable:

a) aids, allowances and other forms of support with special destination, granted from the state budget, the state social insurance budget, the budgets of special funds, the local budgets and from other public funds, including those from non-refundable external funds as well as those of the same nature received from other persons, with the exception of indemnities for temporary disability. There are not taxable incomes the allowances for: maternal risk, maternity leave, child raise and nursing of the sick child, according to the law;

a¹) incomes from the sale of movable goods under the form of waste collected through recycling centers for dismantling, according to national programs financed from the state budget or from other public funds;

b) amounts collected from insurance of any kind representing compensations, amounts insured, as well as any other rights, with the exception of gains received from the insurance companies as a result of the insurance contracts concluded between the parties, on the occasion of redeemable prize-draw bonds. The

compensation in money or in kind received by an individual, as a result of a material damage suffered by such person, including compensations for moral damages, shall not be taxable incomes;

b¹) amounts received as a result of compulsory purchase for public use cause according to law;

c) amounts received as compensations for damages suffered as a result of natural disasters, and for cases of disability or death, according to law;

d) pensions for war invalids, orphans, widows/widowers of war, fixed amounts for nursing of pensioners who have been categorized as 1st degree invalids, and pensions, other than pensions paid from funds established from mandatory contributions to a social insurance system, including those from optional pensions funds, and those financed from the state budget;

e) *** Repealed

f) amounts or goods received as sponsorship or philanthropy

g) incomes received following a transfer of ownership over immovable and movable assets from personal patrimony, other than gains from the transfer of securities, and other than those defined in Chapter VIII¹;

There are considered movable assets at the moment of alienation also the goods sold through recycling centers for dismantling, according to national programs financed from the state budget or from other public funds;

h) rights in cash and in kind received by military recruits or short-term soldiers, students and pupils of national defense, public order, and national security educational units, and by civilians, and as well by officers and soldiers called up or mobilized;

i) scholarships received by persons following any form of education or professional training within an institutionalized framework;

j) amounts or goods received as inheritance or donation. For real estates, in case of inheritance and donations, the regulations in Article 77¹ para (2) and (3) shall apply;

k) incomes from agriculture and forestry, with the exceptions provided in Article 71;

l) incomes received by members of diplomatic missions or consular offices for activities carried out in Romania in their official capacity on a reciprocity basis, by virtue of general rules in international law or according to provisions of special agreements to whom Romania is a party;

m) foreign currency net incomes received by members of diplomatic missions, consular offices and cultural institutes of Romania located abroad, in accordance with the legislation in force;

n) incomes received by officials of international bodies and organizations from activities carried out in Romania in their official capacity, on the condition that their official position is confirmed by the Ministry of Foreign Affairs;

o) incomes received by foreign citizens for consulting activities carried out in Romania in accordance with non-reimbursable financing agreements concluded by Romania with other states, with international bodies and non-governmental organizations;

p) income received by foreign citizens for activities carried out in Romania as Press correspondents, on a reciprocity condition that is granted to Romanian citizens for income from such activities, and provided that the position of these persons is confirmed by the Ministry of Foreign Affairs;

q) amounts representing difference of the subsidized interest for loans received according to the law;

- r) subsidies received for the acquisition of goods, if subsidies are granted according to the legislation in force;
- s) incomes representing benefits in cash and/or in kind received by handicapped persons, veterans of war, invalids and widows of war, persons injured in war outside military service, persons persecuted for political reasons by the dictatorship installed starting with 6 March 1945, those deported abroad or declared prisoners, heirs of hero-martyrs, injured persons, and fighters for the victory of the Revolution of December 1989, and persons persecuted for ethnic reasons by the regimes installed in Romania between 6 September 1940 and 6 March 1945;
- t) prizes obtained by athletes medalists in world, and European championships and Olympic games. There are not taxable incomes the prizes, bonuses and sports allowances granted to athletes, coaches, technicians and to other specialists, as provided by specific legislation for achieving objectives of high performance: obtaining a place on the victory podium at European championships, world championships and Olympic games, as well as the qualification and participation in the final competitions of the world and European championships, the top group, as well as in the Olympic games, in case of sports games. There are not taxable income the bonuses and sports allowances granted to athletes, coaches, technicians and other specialists, as provided in the specific legislation, for training and participating in official international competitions of the Romanian representative teams;
- u) prizes and other rights in the form of accommodation, meals, transport and other similar, obtained by pupils and students in domestic and international competitions, including non-resident pupils and students in competitions carried on in Romania;
- v) premium granted by the state for collective saving and lending for housing, according to the provisions of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, as approved with amendments and completions through Law no. 227/2007;
- x) other incomes which are not taxable, as provided in each category of income.

ART. 42¹

General rules applicable to income derived from trust (fiducie) operation

- (1) Transfer of the trust property from the trust constitutor to the fiduciary does not generate taxable income in accordance with this title at the moment of the transfer for the parties involved, in the case in which the constitutor and the fiduciary, are taxpayers according to Title III.
- (2) Remuneration received for administration of the patrimony by the fiduciary, taxpayer according to Title III, notary public or lawyer, is for the purposes of this title income from adjacent activity and is subject to taxation on a cumulative basis with the income from the activity carried out by the notary or lawyer, according to provisions in chapter II "Income from independent activities".
- (3) The tax treatment of income obtained from administration of the patrimony by the fiduciary other than the remuneration of the fiduciary is determined depending of the nature of that income and is subject to taxation according to the specific rules for each category of income. At the determination of the taxable income fiscal losses of the constitutor shall not be allowed for deduction and they will represent definitive losses. In case the constitutor is a taxpayer according to title III, his tax liabilities in connection with the patrimony administered shall be fulfilled by the fiduciary.
- (4) Income derived in cash or in kind by the individual beneficiary from the fiduciary at the transfer of the patrimony is subject to taxation according to provisions in chapter

IX "Income from other sources". It will be excepted the income derived by the beneficiary from the transfer of the patrimony in the case in which he is the constitutor. In this case that income is not taxable. The obligation to evaluate the income derived at the price established through technical expertise at the place and date when received is on the fiduciary. Tax losses registered from the administration of the patrimony by the fiduciary represent final losses and would not be deductible at the determination of the taxable income for the beneficiary after the transfer of the patrimony from the fiduciary to the individual beneficiary.

ART. 43

Tax rates

(1) The tax rate is 16% and is applied to the taxable income corresponding to each source from each category for determining the tax on incomes from:

- a) independent activities;
- b) salaries;
- c) granting the use of goods;
- d) investments;
- e) pensions;
- f) agricultural activities;
- g) premiums;
- h) other sources.

(2) There are excepted from the provisions of para. (1) the tax rates specifically mentioned for the categories of incomes provided in Title III.

ART. 44

Taxable period

(1) The taxable period is the fiscal year that corresponds to the calendar year.

(2) By exception from provisions of para. (1), the taxable period is shorter than the calendar year in situations where the taxpayer dies during the year.

ART. 45

Determination of personal deductions and fixed amounts

(1) The personal deduction, as well as the other fixed amounts in lei are to be established by order of the Minister of Public Finance.

(2) The amounts are to be computed by rounding up to ten lei, meaning that fractions under 10 lei are to be increased to 10 lei.

CHAPTER II

Income from independent activities

ART. 46

Definition of incomes from independent activities

(1) Incomes from independent activities include commercial incomes, incomes from free professions and incomes from intellectual property rights, derived individually and/or in the form of an association, including incomes from adjacent activities.

(2) Commercial incomes are incomes from acts of trade of the taxpayers, from supply of services, other than those provided in para. (3), and from practicing of a handicraft.

(3) Incomes from free professions are incomes obtained from the exercise of medical professions, lawyer, notary, financial auditor, tax consultant, expert accountant, certified accountant, consultant for investments in securities, architect or other regulated professions, carried out in an independent manner, according to the law.

(4) Incomes from the sale in any manner of intellectual property rights result from patents, drawings and models, samples, production marks and trademarks, technical procedures, know-how, copyrights and rights connected with copyrights and other similar.

ART. 47 Repealed

ART. 48

General rules for the determination of the annual net income from independent activities based on simple entry accounting

(1) The net income from independent activities shall be determined as the difference between the gross income and the expenses made for the purpose of deriving income, which are deductible, on the basis of the data from the simple entry accounting, with the exception of the provisions of Articles 49 and 50.

(2) Gross income includes:

a) amounts collected and the equivalent in lei of the in-kind incomes from carrying out the activity;

b) interest income from trade receivables or from other receivables used in connection with an independent activity;

c) gains from the transfer of assets from the business patrimony used in an independent activity, excluding the value of goods that remain after the final termination of the activity;

d) incomes from the commitment not to carry out an independent activity or not to compete with another person;

e) incomes from the cancellation or exemption of certain payment obligations incurred in connection with an independent activity.

f) incomes registered by cash registers with fiscal memory installed as taximeters on passenger vehicles or on vehicles for transportation of goods as taxi.

(3) The following are not considered to be gross incomes:

a) contributions in cash or the equivalent in lei of contributions in kind made at the beginning of an activity or during carrying on of such activity;

b) amounts received as bank loans or loans from natural or legal persons;

c) amounts received as compensations;

d) amounts or goods received as sponsorship, philanthropy or donations.

(4) Expenses related to incomes should meet the following general conditions for being allowed as deductions:

a) they should be incurred within the framework of activities carried out for the purpose of deriving income, and justified by documents;

b) they should be included in the expenses of the financial exercise for the year in which they were paid;

c) they are to follow the rules regarding depreciation as provided in title II, depending on the case;

c¹) to observe the rules regarding deductibility of expenses representing investments in fixed assets for medical offices in accordance with provisions in art. 24, para (16);

d) expenses with insurance premiums should be incurred for:

1. tangible or intangible assets from the business patrimony;
2. assets serving as bank guarantees for the loans used for carrying out the activity for which the taxpayer is authorized;
3. insurance premiums for professional risk insurance;
4. persons deriving incomes from salaries, according to provisions in Chapter III of the present title, on the condition that the amount representing the insurance premium is taxed at the beneficiary at the moment of payment by the payer.

(5) The following expenses have limited deductibility:

a) expenses with sponsorship, philanthropy, and for granting of private scholarships, incurred according to the law within the 5% limit from the computation base determined according to para. (6);

b) protocol expenses, within the 2% limit from the computation base determined according to para. (6);

c) expenses with the allowance paid when travelling for business purposes and for temporary assignment in another locality, in the country and abroad, within the limit of 2.5 times the legal level established for government institutions;

d) social expenses, within the limit of up to 2% on the annual salary fund; e) losses related to perishable goods, within the limits provided by the legislation;

f) expenses with luncheon coupons granted by employers, according to the law;

f¹) expenses with holiday vouchers granted by employers, according to the law;

g) contributions made on behalf of employees to optional pension funds, according to the legislation in force, within the limit of the equivalent in lei of euro 400/year/person;

h) voluntary health insurance premium, according to law, within the limit of the equivalent in lei of 200 euro/year/person;

i) expenses incurred for the independent activity and for personal purposes of the taxpayer or associates are deductible only for the portion of the expense that is related to the independent activity;

j) expenses with mandatory social contributions for employees and taxpayers, including those for insurance against labor accidents and professional diseases, according to the law;

k) interest related to loans from individuals and legal persons other than professional credit institutions used for carrying out the activity, based on the contract concluded between the parties, within the limit of the reference interest of the National Bank of Romania;

l) expenses incurred by the user, representing rent - leasing installment - in case of operational leasing contracts, respectively expenses with depreciation and interest for financial leasing contracts, according to the provisions regarding leasing operations and leasing companies.

m) fees paid to professional associations within the limit of 2% of the computation base determined according to para. (6);

n) expenses representing professional mandatory contributions payable, according to law, to professional organizations where taxpayers are enrolled, within the limit of 5% of the gross income derived.

(6) The computation base is determined as the difference between the gross income and deductible expenses, other than expenses with sponsorship, philanthropy,

granting of private scholarships, protocol expenses, fees paid to professional associations.

(7) There are not deductible expenses:

- a) amounts or goods used for personal purposes by the taxpayer or his family;
- b) expenses related to non-taxable incomes sourced in Romania or abroad;
- c) the income tax due according to this title, including the tax on income derived abroad;
- d) costs with insurance premiums, other than those referred to in para. (4) letter d) and in para. (5) letter h);
- e) donations of any kind;
- f) fines, seizures, interest, penalties for late payments and penalties due to Romanian and foreign authorities, according to the law, other than those paid according to provisions of commercial contracts;
- g) installments related to contracted loans;
- h) ***Repealed
- i) expenses with acquisition or production of goods and with depreciable rights from the Inventory Register;
- j) expenses relating to goods missing from the inventory or damaged, and which are non-chargeable, if the inventory is not covered by an insurance policy;
- k) amounts or value of goods confiscated as a result of violating legal provisions in force;
- l) income tax borne by the payer of income on behalf of the beneficiaries of income;
- l¹) 50% from the expenses with fuel for motorized road vehicles exclusively used for passenger road transport, with a maximum authorized weight not exceeding 3.500 kg and which do not have more than 9 passenger seats, including the driver's seat. As an exception, expenses with fuel incurred while performing an activity for deriving income shall be entirely deductible in the situation in which the vehicles are classified into one of the following categories:
 - 1. vehicles used solely for: intervention, repairs, safeguard and protection, courier services, transport of employees to and from the place of carrying on the activity, and vehicles especially adapted to be used as television camera truck, vehicles used by the salesmen and by labor recruitment agents;
 - 2. vehicles used for paid passenger transport, including for taxi driver's activity;
 - 3. vehicles used for rental to other parties, including for carrying on the training activity within the driver's school courses;
- m) other amounts provided by the legislation in force.

(8) Taxpayers obtaining incomes from independent activities are required to organize and maintain simple entry bookkeeping, observing the rules in force regarding accounting records and the keep the journal-register of receipts and payments, the inventory-register and other accounting documents provided by the legislation in force.

(9) In the inventory-register there will be recorded all goods and rights related to the performance of the activity.

ART. 49

Determination of the annual net income from independent activities based on income norms

(1) In case of taxpayers deriving trade income as defined at art. 42 para (2), the annual net income is determined based on income norms for the place of carrying on the activity.

(2) The Ministry of Public Finance shall draft rules that contain the classification of activities for which the net income is determined based on the annual norms of income that are to be approved by order of the minister of public finance. The classification will be drafted according to the activities existing in the Classification of activities at national level as approved by Government Decision no. 656/1997 as amended. General Directorates for Public Finances at county level and at Bucharest level have the following responsibilities:

a) to establish the income norms level;

b) to publish them on a yearly basis, during the 4th quarter of the year preceding the year when norms are going to be applied;

(2¹) The norm on income generating trade income for each independent activity carried out by the taxpayer could not be less than the gross minimum salary in Romania in force at the moment when drafting the norm multiplied by 12. Provisions in this paragraph are also applied when the activity is carried out within an association without legal personality. The norm of income is established for each member of the association.

(3) For determination of the annual norms of income, the income ceiling determined by multiplying the gross minimum salary in Romania by 12 is the net annual income before applying the criteria. The criteria for determination of the norms of income by territorial and Bucharest general directorates of public finances are those provided in the methodological norms.

(4) If a self-employed taxpayer carries out an independent activity generating trade income for periods of less than a calendar year, the norm of income related to that activity is adjusted so as to reflect the part of the calendar year in which it was carried out that activity

(5) If a taxpayer conducts two or more activities generating trade income, the net income from these activities is determined by cumulating the norms of income corresponding for each activity.

(6) If a taxpayer carries out an activity referred to in paragraph (2) and another independent activity the net annual income is determined based on simple entry bookkeeping according to art. 48

(7) *** Abrogat

(8) According the accounting norms drafted for this purpose, taxpayers carrying out activities for which the net income is determined based on norms of income have the obligation to fill in only the receipt part from the journal-register for receipts and payments.

(9) Taxpayers determining the net income based on the norms on income and which in the preceding fiscal year registered an annual gross income exceeding lei equivalent of 100.000 euro have the obligation to determine the net annual income based on a real system. This category of taxpayers has the obligation to fill in and file the declaration regarding estimated income/norm of income until January 31st inclusive. The exchange rate used for determination of the lei equivalent for 100.000

euro is the annual average exchange rate communicated by the National Bank of Romania at the end of the fiscal year.

ART. 50

Determination of annual net income from intellectual property rights

(1) The net income from intellectual property rights shall be determined by subtracting the following expenses from the gross income:

- a) a deductible expense equal to 20% of the gross income;
- b) the mandatory social contributions paid.

(2) In case of incomes derived from creation of monumental art works, the net income shall be determined by deducting the following expenses from the gross income:

- a) a deductible expense equal to 25% of the gross income;
- b) the mandatory social contributions paid.

(3) In case of the exploitation by the heirs of intellectual property rights, as well as in case of remuneration representing the succession right and the compensatory remuneration for the private copy, the net income shall be determined by subtracting from the gross income the amounts payable to the collective administration bodies or to other payers of such incomes, according to law, without applying the forfeiting quota expenses provided in paragraphs (1) and (2).

(4) To determine the net income from intellectual property rights, the taxpayers shall fill in only the part of the journal-register for receipts and payments which refers to receipts. This regulation is optional for those who consider that they may satisfy their declaration obligations directly based on the documents issued by the payer of income. These taxpayers shall have the obligation to archive and keep the proofing documents at least for the period of prescription provided by the law.

ART. 51

The option to determine the net income using the data from the simple entry bookkeeping

(1) Taxpayers deriving incomes from independent activities which are taxed based on income norms, and those who derive incomes from intellectual property rights, may choose to determine the net income according to the real system, as provided in Article 48.

(2) The option to determine net income based on the data in the simple entry bookkeeping is compulsory for the taxpayer for a period of 2 consecutive fiscal years and it shall be considered as renewed for a new period unless the taxpayer is not requesting to return to the previous system by filling in accordingly the declaration regarding estimated income/income norm and filing it to competent tax authority until January 31st inclusive of the year following expiration of the 2 years period.

(3) The option to determine the net income according to the real system is exercised by filling in the declaration regarding estimated income/income norm and filing it to competent tax authority until January 31st inclusive, in case of taxpayers that carried out the activity in the previous year, and within 15 days, inclusive, from the beginning of the activity, in case of taxpayers who begun the activity during the fiscal year.

ART. 52

Withholding the tax at source representing advance payments for certain incomes from independent activities

(1) The payers of the following incomes whether legal persons or other entities liable to keep accounting books and records have the obligation to compute, withhold and pay tax by withholding at source, representing advance payments, from the incomes paid:

- a) incomes from intellectual property rights;
- b) incomes from activities carried out based on contracts concluded according to the Civil Code and agency contracts;
- c) incomes from the activity of accounting and technical expertise, judicial expertise and extra-judicial expertise;
- d) income obtained by an individual from an association with a taxpayer legal person, according to Title IV¹, which does not create a legal person.

(2) The tax which must be withheld shall be determined as follows:

- a) in case of incomes provided in para (1) letters a) - c), by applying a taxation quota of 10% to the gross income less compulsory social contributions withheld at source according to title IX²;
- b) in case of income provided in para (1) letter d), by applying the taxation quota due on micro-enterprises incomes, to the incomes distributed to the individual which is party in the association.

(3) The tax that must be withheld shall be paid to the state budget until the 25th inclusive of the month following the month when the income was paid, with the exception of the tax related to the incomes provided in para (1) letter d), for which the due date shall be established according to Title IV¹.

ART. 52¹

The option to determine the final tax for certain income from independent activities

(1) Taxpayers deriving incomes from the activities mentioned at art. 52 para (1) letters a) – c) may choose for determination of the tax on income as a final tax. The option to tax the gross income shall be made in writing at the moment of conclusion of every legal relationship/contract and is applicable to the income derived during the contract.

(2) The tax on income is withheld at source by payers of the income at the moment of payment by applying a 16% rate on the gross income.

(3) The tax computed and withheld is a final tax.

(4) The tax withheld is paid to the state budget until 25th inclusive of the month following the month when it was withheld.

ART. 53

Advance payments for the tax on income from independent activities

(1) Taxpayers deriving income from independent activities shall have the obligation to make advance payments for the annual tax payable to the state budget, according to Article 82, except for the incomes provided in Article 52, for which the advance payment is made by withholding at source or for which the tax is final according to the provisions of Article 52¹.

(2) The tax withheld at source by the payers for the income obtained from sale of movable goods from the patrimony as waste, as provided at art. 78 para (1) letter f), is computed by applying a 16% rate to the gross income and is representing an advance payment for the annual tax owed by the taxpayers, whether derived individually or as part in an association, and is determined in the real system based on data from the entry bookkeeping . Advance payments shall be taken into consideration for the determination of the annual tax by the competent tax authority.

ART. 54

Taxation of the net income from independent activities

Income from independent activities shall be taxed according to provisions in chapter X from this title.

CHAPTER III Incomes from salaries

ART. 55

Definition of incomes from salaries

(1) Incomes from salaries shall be all incomes in cash and/or in kind obtained by an individual who carries on an activity based on an individual labor agreement or according to a special statute provided by the law, irrespective of the period to which it refers, name of the incomes or the manner in which they are derived, including allowances for temporary disability.

(2) Taxation rules specific to incomes from salaries shall also apply to the following types of incomes, considered similar with salaries:

- a) allowances for activities carried out as a public official, according to the law;
- b) allowances for activities carried out in an elected position within non-for-profit legal persons;
- c) monthly military payments, allowances, premiums, bonuses, benefits and other rights of the military personnel, granted according to the law;
- d) gross monthly allowance, and the amount from the net profit, derived by administrators of the national firms/companies, of the trading companies where the state or a local public administration authority is a majority shareholder, and of the regie autonome;
- d¹) remuneration obtained by the managers based on an agency contract according to the company law;
- d²) the remuneration received by the president of the owners' association or by other persons, based on the agency contract, according to the law concerning establishment, organization and operation of the owners' association;
- e) amounts received by founding members of the companies established by public subscription;
- f) amounts received by representatives of the general assembly of the shareholders, of the board of directors, members of the directorship and of the supervisory board, and by the commission of auditors;
- g) amounts received by the representatives of the tripartite bodies, according to the law;
- h) monthly allowances of the sole shareholder, at the value registered in the social insurance declaration;

i) amounts granted by non-profit organizations and other entities which are not profit tax payers, over the limit of 2.5 times the legal level established for the allowance received when traveling for business purposes or when seconded in another locality, in the country or abroad, by government employees;

j) administrator's allowance, and the amount from the net profit derived by administrators of companies according to the statutes or established by the general assembly of the shareholders;

j^1) amounts representing salaries or salary differences established based on a final and irrevocable court decision, and their adjustment with the inflation index;

j^2) monthly allowances paid according to the law by the employer for a non-competition clause according to the individual labor agreement;

k) any other amounts or benefits in kind having a salary nature or assimilated to salaries.

(3) Benefits, with the exception of those provided in para (4), received in connection with an activity mentioned in para (1) and (2) shall include, but will not be limited to:

a) the use of any good, including any type of vehicle from the business patrimony, for personal purposes, with the exception of transportation from home to the place work and back;

b) accommodation, food, clothes, personnel for household works, as well as other goods or services provided free of charge or at a price smaller than the market price;

c) non-reimbursable loans;

d) cancellation of a debt claim of the employer over the employee;

e) telephone subscriptions and the cost of telephone calls, including telephone cards, for personal purposes;

f) travel permits by any means of transportation, used for personal purposes;

g) insurance premiums paid by the payer for its own employees or for another beneficiary of salary income, at the moment of the payment of such premium, other than mandatory premiums.

h) gift tickets granted according to the law.

(4) The following amounts shall not be included in the salary income and shall not be taxable within the meaning of income tax:

a) funeral aid, aids for household damages as a result of natural disasters, aids for serious and incurable diseases, aids for child birth, incomes representing gifts for the minor children of the employees, gifts granted to female employees, the equivalent cost of transportation to and from the place of work of the employee, costs of the benefits representing treatment and holiday including transportation for employees and their family members granted by employers for their employees or for other persons, as provided by the labor contract.

Gifts granted by employers for the benefit of minor children of the employees, on the occasion of Easter, 1st of June, Christmas and for similar holidays of other religious cults, as well as gifts granted to female employees on the occasion of 8th March, shall not be taxable to the extent that the value of the gift granted for each person, for any of the above mentioned occasions, is not exceeding 150 lei.

Incomes derived by individuals having the nature of those provided above, shall not be included in the salary income and shall not be taxable income if these incomes are received on the basis of special laws and are financed from the budget;

a^1) *** Repealed

a^2) *** Abrogată

b) meals granted by employers to employees, according to the law;

- c) value of the benefit for using a business dwelling or a dwelling within the premises of the unit, according to the job assignment, to the appointment according to law, or to the specific character of an activity in a certain field, compensation of the rent for national defense, public order, and national security personnel, and compensation of the rent difference borne by individuals according to special laws;
- d) accommodation and value of the rent for apartments made available to public officials, consular and diplomatic employees working abroad, according to the law;
- e) value of technical equipment, individual protection and working equipment, protective food, medicines and hygienic-sanitary materials, other labor protection benefits, and mandatory uniforms and equipment, which are granted according to the law;
- f) value of the travel expenses for the transportation between employee's domicile locality and the locality where it is located the employee's place of work, at the level of a monthly subscription, for situations where apartments or the equivalent value of the rent is not provided for, according to law;
- g) amounts received by the employees to cover transportation expenses and accommodation, allowance received for the period of delegation or temporary secondment in another locality, in the country or abroad, for business purposes. Amounts exceeding the 2.5 times limitation over the allowance granted to governmental employees by legal persons without a patrimonial purpose and by other entities which are not profit tax payers shall be excepted from these provisions;
- h) amounts received according to the law, to cover the expenses with moving for business purposes;
- i) setting up allowances which are granted only once, at the employment in a unit located in other locality different from the residence locality, during the first year of activity after graduation, within the limit of one basic salary at the employment, and as well setting up and moving allowances granted according to special laws, to personnel of public institutions and to those moving their domicile in localities within a disadvantaged zone, established according to the law, where they have their place of work;
- j) *** Repealed
- k) *** Repealed
- k^1) salaries derived by people with severe or serious disabilities
- l) incomes from salaries as a result of creating computer programs; determination of what represents the activity of creating computer programs shall be made according to a joint order of the minister of labor social solidarity and family, the minister of communication and information technology and the minister of public finance;
- m) amounts or benefits received by individuals from dependent activities carried out abroad, regardless of the fiscal treatment in the foreign state. Exceptions are salary incomes paid by or on behalf of an employer which is a Romanian resident or which has a permanent establishment in Romania, which are subject to taxation regardless of the period for carrying out activities abroad;
- n) expenses incurred by an employer for the professional training of the employees in connection with the activity carried out by the person for the employer;
- o) cost of telephone subscriptions and telephone calls, including telephone cards, incurred for business purposes;
- p) benefits representing rights to stock option plans, at the moment of granting and at the moment of exercising such rights;
- r) favorable differences between preferential interest established following negotiation and market interest for credits and deposits.

(5) Benefits in cash and in kind charged to the employee shall not be taxable.

ART. 56

Personal deduction

(1) Individuals provided in Article 40 para (1) letter a) and para (2) are entitled to a monthly deduction from the net salary income representing personal deduction, during the taxable period, only for salary incomes at the principal place of work.

(2) The personal deduction is granted for individuals with a gross monthly income not exceeding 1.000 lei, inclusive, as follows:

- for taxpayers without dependants – 250 lei;
- for taxpayers with one dependant - ROL 350;
- for taxpayers with two dependants - ROL 450;
- for taxpayers with three dependants - ROL 550;
- for taxpayers with four or more dependants - ROL 650.

For taxpayers deriving a monthly gross salary income between 1.000,01 and 3.000 lei inclusive, the personal deductions shall be digressively reduced and shall be established by order of the minister of public finance.

For the taxpayers deriving a monthly gross salary income exceeding 3.000 lei the personal deduction shall not be granted.

(3) The dependant may be the wife/husband, children or other family members, relatives to the second degree inclusive of the taxpayer or of the wife/husband. The dependant taxable or non-taxable income shall not exceed 250lei/month,.

(4) In case a person is dependant of several taxpayers, the amount representing the personal deduction shall be attributable to a single taxpayer, according to the agreement between parties.

(5) Taxpayer's children under the age of 18, are considered supported.

(6) The amount representing the personal deduction is granted to the dependants of the taxpayer, for that taxable period of the fiscal year when they were dependants. The period shall be rounded off to full months to the advantage of the taxpayer.

(7) The following shall not be considered dependants:

- a) individuals owning agricultural and forestry land with a surface exceeding 10.000 sqm. in the hilly and plain areas and exceeding 20.000 sqm. in the mountain areas;
- b) individuals deriving incomes from the cultivation and selling of flowers, of vegetables in greenhouses, in solaria specially designed for such purposes and/or using irrigated system, from the cultivation and sale of shrubs, decorative plants and mushrooms, from the operation of viticulture and tree nurseries, irrespective of the surface.

(8) The personal deduction determined according to this article shall not be granted to personnel sent in a permanent mission abroad, according to the law.

ART. 57

Determination of the tax on salary incomes

(1) Beneficiaries of salary incomes are liable to a final monthly tax, which is computed and withheld at source by the incomes payers.

(2) The monthly tax provided in paragraph (1) shall be determined as follows:

- a) at the location where the principal employment is exercised, by applying the 16% rate to the computation base determined as the difference between the net income

from salaries, computed by deducting from the gross income the monthly mandatory contributions, and the following:

- the personal deduction granted for that month;
- the trade union subscription paid in that month;
- the contributions to the optional pension funds not exceeding 400 EURO for one year;

b) for the incomes obtained in other cases, by applying the 16% rate to the computation base determined as difference between the gross income and mandatory contributions for each place where such incomes were obtained.

(2¹) For salary income and/or for salary income differences determined for previous periods according to the law, the tax is computed and withheld at the payment date, as provided by law in case of incomes derived outside the principal place of employment. The tax is transferred until the 25th of the month following the month when payments were made.

(3) The payer has the obligation to determine for each taxpayer the total value of the annual tax on salary incomes.

(4) The taxpayers may decide on the destination of an amount representing up to 2% of the tax established in para (3), for supporting the non-profit entities set up and functioning according to the law, for churches, and for granting private scholarships, according to the law.

(5) The competent tax authority has the obligation to compute, withhold and pay the amount provided in para (4).

(6) The procedure for enforcing the provisions of para (4) and (5) shall be established by an order of the minister of public finance.

ART. 58

Deadline for payment of tax

(1) The payers of salaries and incomes assimilated to salaries are required to compute and withhold the tax related to the monthly income, on the date of payment of such incomes, and to transfer the tax to the state budget until the 25th of the month inclusive, following the month when incomes were paid.

(2) As an exception to provisions in para (1) the monthly tax computed and withheld on the date of payment will be transferred to the state budget until the 25th of the month inclusive, following the quarter for which the tax is due by the following payers of salaries and incomes assimilated to salaries:

a) associations, foundations and other non-profit entities legal persons, except government institutions, which employed as an average in the previous year up to 3 employees exclusive;

b) profit tax payers, legal persons, which in the previous year derived total incomes not exceeding 100.000 EURO and which employed as an average up to 3 employees exclusive;

c) legal persons, payers of the microenterprise tax on income, which employed as an average in the previous year up to 3 employees exclusive;

d) self-employed and individual enterprises as well as individuals carrying out liberal professions and associations without legal personality set up by individuals which employ according to the law dependent labor based on individual employment agreements.

(3) Average number of employees and total income is established according to provisions in art. 296¹⁹ para. (1³) and (1⁴).

ART. 58¹

Deduction of amounts for saving and lending for housing, in accordance with the provisions of the Government Emergency Ordinance No 99/2006 regarding credit institutions and capital adequacy, as approved with amendments and completions by the Law No 227/2007.

The taxpayer may deduct from the taxable incomes from salaries derived at the principal employment, expenses made with the collective savings for housing, in accordance with the provisions of the Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy, approved with amendments and completion by the Law No 227/2007, in an amount not exceeding 300 EURO per year. The obligation to grant this deduction lies with competent tax authority and the implementation procedure is established by order of the minister of public finance.

ART. 59

Tax declarations liabilities for payers of salary incomes

(1) Payers of incomes withheld at source have the obligation to fill in and file the declaration regarding computation and withholding of the tax for each beneficiary of income until the due date provided in art. 93, para. (2).

(2) The payer of income is required to issue at the taxpayer's request a document that supplies at least information regarding: taxpayer's identification data, income derived during the year, personal deductions granted, the tax computed and withheld. The document issued at the taxpayer's request is not a standard form.

ART. 60

The payment of tax for certain income from salaries

(1) The provisions of this article apply to taxpayers carrying out their activity in Romania and obtaining salary incomes from abroad, and to Romanian individuals obtaining incomes from salaries following their activities carried out at diplomatic missions and consular offices accredited in Romania.

(2) Any taxpayer provided in para. (1) is required to declare and pay tax to the state budget on a monthly basis on or before the 25th of the month following the month in which the income is derived, either directly or through a fiscal representative. The monthly tax is established according to art. 57.

(3) Diplomatic missions and consular offices accredited in Romania, as well as representative offices of international bodies or representative offices of companies and foreign economic organizations, authorized according to the law to carry out their activity in Romania, may choose for their employees deriving taxable salary incomes from Romania, to fulfill the obligation regarding the computation, withholding and payment of income tax from salaries. Provisions in para. (2) do not apply for taxpayers in cases where the above mentioned choice was expressed and communicated to the competent fiscal body.

(4) A legal person, an individual, or any other entity for which the taxpayer carries out the activity as provided in para. (1), is required to submit information to the competent tax authority regarding beginning date of activity for the taxpayer and, respectively, the termination date of such activity, within 15 days after such event takes place, except when the person meets the obligation regarding computation,

withholding and payment of the tax on incomes from salaries, as provided in para. (3).

CHAPTER IV

Incomes from granting the use of goods

ART. 61

Definition of taxable incomes from granting the use of goods

(1) Incomes from granting the use of goods shall be the incomes in cash and/or in kind, other than the incomes from independent activities, obtained from granting the use of movable and immovable goods, derived by the owner, the usufruct owner or other legal holder.

(2) Starting with the next fiscal year, individuals deriving incomes from the granting the use of assets from carrying out more than 5 rental contracts at the end of a fiscal year, shall qualify such incomes in the category of incomes from independent activities and shall make them subject to the rules for establishing the net incomes for this category. An order of the National Agency for Fiscal Administration president shall be issued for the application of this regulation.

(3) Incomes derived by owner from renting between one to 5 rooms inclusive for touristic purposes, from the rooms existing in privately owned homes are also considered incomes from granting the use of goods.

(4) In the category incomes from granting the use of goods are also included incomes derived by taxpayers mentioned at para (3) which during the fiscal year derive income from renting more than 5 rooms for touristic purposes, from the rooms existing in privately owned homes. From the date when more than 5 rooms are rented until the end of year, the net income would be determined using a real system according to provisions existing for the category income from independent activities.

(5) Income from renting more than 5 rooms for touristic purposes, from the rooms existing in privately owned homes qualify as income from independent activities for which the net annual income is determined based on income norms or using a real system and are liable to tax according to provisions in chapter II from this title.

ART. 62

Determination of net income from granting the use of goods

(1) Gross income from granting the use of goods from personal patrimony, other than income from leasing agricultural assets, are considered the total amounts in cash and/or lei equivalent of in-kind benefits determined according to the contract concluded between the parties, for each fiscal year, irrespective of the moment of their receiving. The gross income is increased with the value of expenses born according to provisions in the law by the owner, usufruct owner or other legal holder, if incurred by the other contracting party.

(1[^]1) In case of income derived from renting movable and imovable assets from the personal patrimony, the gross income is determined based on the rent provided in the contract concluded between the parties for each fiscal year, irrespective of the moment of receiving the rent.

(2) The net income from the granting the use of goods is computed by deducting from the gross income an amount representing expenses determined by applying a 25% rate on the gross income.

(2¹) In case of income derived from leasing agricultural assets from personal patrimony the gross income is determined based on the legal agreement/contract concluded between the parties and represents the total amounts in cash and/or lei equivalent of in-kind benefits received.

(2²) If the agricultural leasing is paid with benefits in kind, the lei valuation is made based on the average prices of agricultural products established by decisions of the county council and respectively of the general council of Bucharest following proposals of territorial directorates of the Ministry of Agriculture, Forestry and Rural Development. The decisions are issued before beginning of the fiscal year. These decisions are transmitted observing the same due date to General Directorates for Public Finance at county level and at Bucharest level to be communicated to fiscal authorities in the territory.

(2³) The net income from the agricultural leasing is determined at each payment by deducting from the gross income an amount representing expenses determined by applying a 25% rate on the gross income.

(2⁴) Income from agricultural leasing is computed by applying a 16% rate on the net income and is a final tax. The tax is withheld at source by the payers of income at the moment of payment.

(2⁵) The tax computed and withheld for agricultural leasing is paid to the State Budget until 25th inclusive of the month following the month when it was withheld.

(2⁶) In case the net income from agricultural leasing is determined based on the real system according to the option made, taxpayers are required to provide for the option made in writing in the contract/legal agreement at the moment when it is concluded.

(3) As an exception from provisions of para. (1), (2), and (2¹) - (2⁵) taxpayers may choose for determination of the net income from granting the use of goods using the real system, based on the data from the simple entry accounting system.

(4) The provisions regarding the option provided in Article 51 para (2) and (3), also applies for taxpayers specified in paragraph (3).

ART. 62¹

Rules regarding determination of income tax according to annual income norms

(1) Taxpayers deriving income from renting between one to 5 rooms inclusive for touristic purposes from the rooms existing in privately owned homes, are liable to pay tax according to an income determined based on annual income norms.

(2) The annual income norm in case of rental agreements corresponding for one room is determined by the General Directorates of Public Finance at county level and at Bucharest level, depending on the case, based on the criteria established by common order of the Minister of regional development and tourism and the Minister of public finances and on the proposals of the Ministry of Regional Development and Tourism regarding the annual norms of income.

The proposals regarding the level for the annual norms of income are transmitted annually by the Ministry of Regional Development and Tourism to the Ministry of Public Finance during the 4th quarter, no later than 30th of November of the year prior the year when the annual norms of income are to be applied.

(3) General Directorates of Public Finance at county level and at Bucharest level, depending on the case, have the obligation to advertise on an annual basis the annual income norms during the 4th quarter of the year prior the year when the annual norms of income are to be applied.

(4) Taxpayers provided at para (1) are liable to file to the competent tax authority for each fiscal year until 31st of January inclusive, the declaration regarding estimated income / income norm for the current year. Within 15 days from the date when taxpayers start deriving, during the year after 31st of January inclusive, income defined according to art. 61, para (3), they have the obligation to fill in and file the declaration regarding estimated income / income norm for the current fiscal year.

(5) The competent tax authority is determining the annual tax based on the declaration regarding estimated income / income norm and issues the notice of assessment at the due date according to the procedure established through order of the president of National Tax Administration Agency.

(6) The annual tax owed is computed by applying a 16% rate on the annual income norm. The tax is final.

(7) The annual tax due is paid in full to the state budget.

(8) During the year, payment of the tax to the state budget is made in two equal installments as follows: 50% from the tax until 25th of July inclusive and 50% from the tax until 25th of November inclusive. For declarations regarding estimated income/norm of income filed in November or December, the annual tax due is determined by annual notice of assessment based on the declaration regarding estimated income/norm of income, and is payable within 60 days from the date the notice of assessment was communicated.

ART. 62^{^2}

Rules regarding determination of the tax in case of the option for determination of the net income using a real system

(1) Taxpayers deriving incomes defined at art. 61, para (3) have the right to opt for determination of the annual net income using a real system based on the data available from the single entry bookkeeping according to provisions in art. 48.

(2) The option is exercised for every fiscal year by filling in and filing the declaration regarding estimated income/income norm for the current year until 31st of January inclusive. In case taxpayers start deriving incomes defined according to art. 61 para (3) during the year after 31st of January inclusive, the option exercised for the current year should be made within 15 days from the date the event occurred by filling in and filing the declaration regarding estimated income/norm of income.

(3) During the fiscal year taxpayers are required to make pre payments representing taxes paid to the state budget on the account of the annual tax due in two equal installments as follows: 50% from the tax until 25th of July inclusive and 50% from the tax until 25th of November inclusive. In case the notice of assessment for the current year was not issued until 1st of November and in case of taxpayers deriving incomes provided at art. 61, para. (3) after 1st of November of the current year, no pre payments shall be established. The net annual income shall be subject to taxation according to the notice of assessment issued based on declaration regarding the income derived.

(4) The competent tax authority is determining the pre payments by applying the 16% rate to the net annual income, estimated from the declaration regarding estimated income/income norm, and issues the notice of assessment that is communicated to the taxpayers according to the procedure established by order of the president of the National Tax Administration Agency. For declarations regarding estimated income/income norm filed in November or December no pre payments shall be established. The net income derived until the end of the year is liable to taxation

according to the notice of assessment issued based on the declaration regarding the income derived.

(5) Taxpayers provided at para (1) are liable to file the declaration regarding the income derived at the competent tax authority for every fiscal year, until 25th May inclusive of the year following the year when the income was derived.

(6) Based on the declaration regarding the income derived, the annual tax due is computed by the competent tax authority by applying a 16% rate on the net annual income determined using a real system and the data existing in the single-entry bookkeeping. The tax is a final tax.

(7) The tax authority determines the annual tax liability and issues the notice of assessment at the due date and in the form established by order of the president of the National Tax Administration Agency.

(8) Amounts representing unpaid taxes according to the notice of assessment are to be paid within 60 days at most, from the date the notice of assessment was communicated. No penalties for late payment or fines are due according to the Tax procedure code for payments made within the 60 days due date.

(9) The annual tax due is paid in full to the State Budget.

ART. 62^3

Rules to establish the final tax for incomes derived from renting more than 5 rooms for touristic purposes, during the fiscal year

(1) If during the fiscal year, the taxpayers provided at art. 61, para. (4), derive incomes from renting more than 5 rooms for touristic purposes are liable to notify the event of exceeding the number rental agreements for more than 5 rooms to the competent tax authority within 15 days from the date when occurred. For the period from the fiscal year when the income was determined according to income norms as provided in art. 62^1, the tax authority will recompute the norms of income and the payments established for the annual income tax.

(2) The procedures for applying provisions in para (1), are to be established by order of the president of the National Tax Administration Agency.

(3) For the remaining period from the fiscal year, the net income is determined using a real system according to provisions in art. 48. Within 15 days from the date the event occurred, the taxpayers concerned are liable to fill in and file at the competent tax authority the declaration regarding estimated income/income norm for determination of the pre payments for the incomes corresponding to the remaining period until the end of the fiscal year. Applicable taxation rules for the incomes derived during the remaining period are those provided at art. 62^2 para. (3) - (9).

ART. 63

Advance payments representing tax on incomes from granting the use of goods

(1) According to provisions in art. 82, taxpayers deriving income from granting the use of goods during the year, except income from agricultural leasing, shall pay advance payments representing tax on income to the State Budget.

(2) There are excepted taxpayers deriving incomes from granting the use of goods for which the rent provided by the contract concluded between the parties is in lei, no option for determination of the net income using a real system is made and at the end of the previous fiscal year, conditions for qualifying as incomes from independent

activities with pre payments representing taxes at the level of the annual tax due were not met. The tax is a final tax.

(3) By exception from provisions of para. (1), taxpayers deriving income based on annual income norms from renting between one to 5 rooms inclusive for touristic purposes from the rooms existing in privately owned homes or which opt for determination of income using a real system and as well for those deriving incomes from renting more than 5 rooms for touristic purposes existing in privately owned homes, are applicable provisions in art. 62¹ alin. (8), art. 62² alin. (3) - (4) and art. 62³ alin. (3).

(4) Income withheld at source by the payers for incomes derived from sale of movable goods representing waste from the patrimony of the business, as provided at art. 78, para (1) letter f), are pre payments on the account of the annual tax due by taxpayers deriving income from granting the use of goods using a real system and using the data from the single entry bookkeeping. The tax is computed by applying a 16% rate on the gross income. The competent tax authority will take into account pre payments for finalizing the annual tax.

ART. 64

Taxation of the net income from the granting the use of goods

(1) The net income from the granting the use of goods shall be taxed according to provisions of Chapter X of the present title.

(2) Rules provided at chapter X "The annual net taxable income", from this title, do not apply for incomes from granting the use of goods as provided at art. 61, para (3) and (4).

CHAPTER V

Income from investments

ART. 65

Definition of incomes from investments

(1) Income from investments include:

a) dividends;

b) taxable incomes from interests;

c) gains from the transfer of securities defined according to the provisions of Article 7;

d) incomes from forward sale-purchase foreign currency operations based on a contract, and any from other similar operations;

e) incomes from liquidation of a legal person.

(2) The following interest income are not taxable:

a) *** Repealed

b) *** Repealed

c) *** Repealed

c¹) incomes distributed to members of mutual assistance houses depending on their social fund.

(3) Incomes from the first transaction with shares issued by the "Property Fund" derived by individuals to whom these shares were issued are not taxable, according to Titles I and VII of Law no. 247/2005 on the reform in the property and justice areas and on other additional measures, with subsequent amendments and completions.

(4) Incomes derived from holding and trading of state securities and/or of bonds issued by administrative territorial units shall not be taxable incomes.

ART. 66

Determination of income from investments

(1) Gain/loss from transfer of securities, other than participation titles in open investment funds and social parts, is the positive/negative difference between the sale price and the purchase price for types of securities, decreased, depending on the case, by the costs related to the transaction. In the case of transactions with shares that were purchased at a preferential price within the stock option plan system, the gain is to be determined as the difference between the sale price and the preferential purchase price, diminished by the costs related to the transaction.

(2) In case of transfer of ownership rights over securities in open investment funds, the gain is determined as the positive difference between the redemption price and the purchase/subscription price. The redemption price is the price that investor is entitled to at withdrawal from the fund. The purchase/subscription price is the price paid by individual investor for the acquisition of the shares.

(3) In case of transfer of ownership rights over shares, the gain from alienation of shares is determined as the positive difference between the sale price and the par value/purchase price. Beginning with the second transaction, par value is to be replaced by purchase price that includes expenses with commissions, taxes related to the transaction and other similar expenses justified with documents.

(4) Determination of the gain according to para. (1) - (3) is to be made on the date when transaction is concluded according to the contract signed by the parties.

(4¹) *** Repealed

(4²) In case of redemption of securities in open investment funds, determination of gain/loss according to para. (1) - (3) is made by each intermediary, investments administration company or payer of income depending on the case, for each transaction.

(5) Net gain/net loss is determined at the end of each quarter as a difference between profits and losses on a cumulative basis from the beginning of the year following trading of the securities, other than shares and securities in the case of closed companies. Net gain/net loss is determined at the end of each quarter by the taxpayer based on the quarterly tax declaration.

(5¹) Annual net gain/annual net loss from transfer of securities other than shares and securities in case of closed companies is determined as a difference between gains and losses registered during the year on a cumulative basis from the beginning of the year and equals the determined net gain/determined net loss at the end of 4th quarter of that year. Annual net gain/annual net loss is determined by the taxpayer based on the declaration regarding the income derived filed according to provisions in art. 83.

(6) For transaction with securities, other than shares and securities in case of closed companies, incurred during each quarter from the fiscal year, each intermediary, investments administration company in case of redemption of shares in open investments funds or other payer of income, depending on the case, have the following obligations:

a) to compute the annual gain/loss for each transaction made for the taxpayer;

b) to communicate in writing to each taxpayer the information regarding total gains/losses, for transactions made during each quarter until 5th of the month following the quarter;

c) to file, at the competent tax authority until the last day of February current year, for each taxpayer an annual informative declaration for the last year regarding total gains/losses for transactions made with securities, other than shares and securities in case of closed companies.

(6^{^1}) The procedures to apply provisions in para (6) are to be established by order of the president of the National Tax Administration Agency according to provisions of Government Ordinance no. 92/2003 regarding Fiscal Procedure Code republished as amended and completed.

(7) Incomes representing gains derived from forward sales-purchase hard currency based on a contract, and from any other operations of this type, are the favorable differences resulted from these operations at the moment when the operation is concluded and recorded in the customer's account. The annual net gain is determined as difference between profits and losses registered during the year from such operations. The annual net gain is computed by the taxpayer based on the income declaration, filed according to provisions of art. 83. In case of transactions during the fiscal year each intermediary or payer of income, depending on the case, has the following obligations:

a) to compute the annual gain/annual loss from transactions made during the year for each taxpayer;

b) to communicate in writing to the taxpayer the information regarding the annual profit/annual loss, and the tax computed and withheld as pre payment, until the last day of February of the year following the year for which the computation is made.

(8) The taxable income derived from liquidation of a legal person is the excess of the distributions in cash or in kind over the contribution to the social capital of the individual beneficiary.

ART. 67)

Withholding of tax from investment incomes

(1) Incomes representing dividends, including amounts received as a result of holding shares in closed investment funds, are to be taxed with a rate of 16% of the amount of such incomes. Legal persons are required to compute and withhold the tax on dividend incomes at the time of payment of such dividends to shareholders or associates. The deadline for payment of the tax is until 25th of the month following the month when the payment is made. In the case of distributed dividends that were not paid to shareholders or associates by the end of the year during which the annual financial statements have been approved, the tax on dividends is to be paid until 25th of January inclusive of the following year.

(1^{^1}) Interest income for current accounts/deposits and those for client deposits set up according to the legislation regarding savings and loans for housing derived starting with 1st of July 2010 shall be taxed with a 16% rate. The tax is final irrespective of the date when the legal relationship started. The tax is computed and withheld by payers of such incomes at the moment of registration in the holder's current account or deposit. Payment of the tax is made on a monthly basis until 25th inclusive of month following the month of registration in the account.

(2) Interest income derived starting with 1st of July 2010 for deposits, savings instruments acquired, and civil contracts concluded, shall be taxed with a 16% rate.

The tax is final irrespective of the date when the legal relationship started. For interest income the tax is computed and withheld by the payers of income at the moment of registration in the holder's current account or deposit or at the moment of redemption in case of savings instruments. In case of amounts received as interests for loans granted based on civil contracts, determination of the tax payable shall be made at the moment of interest payment. Payment of the tax for interest incomes shall be made monthly, until the 25th inclusive of the month following the month of registration/redemption, in case of saving instruments, respectively at the moment of the payment of interest, for incomes having this nature based on civil contracts.

(2[^]1) *** Repealed

(3) The computation, withholding, and payment of the tax on investment incomes, others than those provided in para (1) and (2), shall be carried out as follows:

a) the gains determined at the end of each quarter from the transfer of the securities, other than shares and securities in case of closed companies, shall be taxed with a 16% rate. The obligation to compute the quarterly tax representing an advance payment on the account of the annual tax lies with the taxpayer, based on the quarterly tax declaration filed by 25th inclusive of the month following each quarter. Filing date is also payment date for the pre payment representing the quarterly tax paid to the State Budget. The obligation to declare and pay the tax lies with the taxpayer. The tax to be paid representing quarterly pre payment, respectively the tax to be refunded on a quarterly basis, is computed as a difference between taxes due on the net gain cumulated from the beginning of the year until end of the reporting period and the tax due on the net gain cumulated from the beginning of the year until end of preceding reporting period.

a[^]1) *** Repealed

b) in case of gains determined from transfer of securities in closed companies and from transfer of shares, the obligation to compute, withhold and pay the tax lies with the acquirer. The computation and withholding of the tax by the acquirer is made at the moment of concluding the transaction between the parties. The tax is computed by applying a 16% rate on the gain for each transaction. The tax is final. Transfer of ownership upon securities or shares should be registered with the Trade Register and/or with the Shareholders/Associates Register, depending on the case. This operation is not possible without evidence proving payment of the tax to the state budget. The deadline for the payment of the tax is until date of filing documents necessary for registration of transfer of ownership upon shares/securities with the Trade Register or Shareholders Register, depending on the case, irrespective if payment of the relevant shares is made or not according to a time schedule.

c) gains from sale-purchase forward hard currency operations, based on a contract, as well as from any other operations of this type, other than those with financial instruments traded on markets authorized and monitored by the National Securities Commission, shall be taxed with a 16% rate for each transaction. The tax withheld is a prepayment on the account of the payable annual tax. The obligations to compute, withheld, and pay the tax lies with intermediaries or other income payers, depending on the case. The tax computed and withheld representing prepayment should be paid until 25th inclusive of the month following the month when it was withheld.

d) the taxable income derived from liquidation of a legal person by the individuals shareholders/associates shall be taxed with a 16% rate, the tax being final. The obligation to compute, withhold and pay the tax is on the legal person. The tax computed and withheld at source shall be paid until the date of submitting the final financial statement with the trade register office, as drafted by liquidators.

(4) The losses from transactions with shares and securities, in case of closed companies, shall not be recognized for tax purposes, shall not be set off and shall not be carried forward.

(5) *** Repealed

(6) The losses registered during the fiscal year resulted from sale-purchase forward hard currency operations, based on a contract, as well as from any other operations of this type, other than those with financial instruments traded on markets authorized and monitored by the National Securities Commission, shall be compensated at the end of the fiscal year with gains having the same nature derived during the year. If an annual loss is registered following the compensation that loss is not carried forward.

(7) *** Repealed

(8) For applying provisions of the present article, norms regarding determination, withholding and payment of the capital gain tax from the transfer of securities obtained by individuals are to be used. Norms are approved by joint order of the Ministry of Public Finance and of the president of the National Commission of Transferable Securities.

(9) *** Repealed

(10) *** Repealed

ART. 67¹ * Repealed**

ART. 67²

Taxation of the taxable annual net gain/ annual net gain

The annual net taxable gain from transfer of securities, other than shares and securities in case of closed companies, and the annual net gain from forward sale – purchase foreign currency based on a contract and any other operations of this kind, are taxable according to provisions in chapter X of this title.

CHAPTER VI Pension income

ART. 68

Definition of pension income

Pension income are amounts received as pensions from funds established based on mandatory social contributions paid to a social insurance system, including those from optional pension funds and those financed from the state budget.

ART. 68¹

Non taxable income

Pension incomes derived by severe or accentuated disability individuals are non taxable.

ART. 69

Determination of the monthly taxable income from pensions

The monthly taxable income from pensions shall be determined by deducting from the pension income a monthly non-taxable amount of lei 1.000 and mandatory contributions computed, withheld and paid by individuals.

ART. 70

Withholding of the tax from pension incomes

(1) Any payer of pensions have the obligation to compute on a monthly basis the related tax for such income, to withhold it and pay it to the state budget, according to the provisions of the present article.

(2) The tax is computed by applying the 16% tax rate to the monthly taxable incomes from pensions.

(3) The tax computed is withheld on the pension's payment date, and is paid to the state budget until 25th inclusive of the month following the month for which pension was paid.

(4) The tax withheld is a final tax for the taxpayer's pension income.

(5) In case of a pension which is not paid on a monthly basis, the tax to be withheld shall be determined by allocating the pension to each of the months relating to the pension paid.

(6) For computing, withholding, and paying the tax owed, outstanding pension rights shall be spread over the months to which they relate.

(7) Successor's pensions shall be individualized depending on the number of successors and the taxation shall be made depending of the rights due for each successor.

(8) In case of pension incomes and/or of pension incomes differences established for previous periods according to the law, the tax is computed on the monthly taxable income and is withheld at the date of payment, according to legal provisions in force at the date of payment. The tax is transferred by the 25th of the month following the month when payment was made.

(9) The tax on pension incomes is withheld and transferred entirely to the state budget.

ART. 70^{^1} * Repealed**

CHAPTER VII

Incomes from agricultural activities

ART. 71

Definition of incomes from agricultural activities

Incomes from agricultural activities are incomes from the following activities:

- a) cultivation and sale of flowers and vegetables, in greenhouses and solaria specially designed for such purposes and/or in an irrigated system;
- b) the cultivation and sale of shrubs, decorative plants and mushrooms;
- c) the operation of viticulture and tree nurseries and others similar;
- d) selling of farming products obtained after harvesting, in their natural state, from the farming lands that are privately held or leased, to specialized units for collection, industrial processing units or to other units, for being used as such.

ART. 72

Determination of annual net income from agricultural activities based on the income norms

(1) The net income from an agricultural activity shall be determined based on income norms. The income norms shall be established by the specialized territorial directorates of the Ministry of Agriculture, Forestry and Rural Development and shall be approved by the territorial General directorates for public finance of the Ministry of Public Finance. The income norms shall be established, approved and published at the latest by 31st May of the year for which such income norms shall apply.

(2) The income norms shall be established per unit of surface area.

(3) If an agricultural activity is carried out by a taxpayer for shorter periods - beginning, ending and other fractions of the year – than a calendar year, then the income norm related to such activity shall be adjusted to reflect the period of the calendar year when the activity is carried out.

(4) If an agricultural activity of a taxpayer registers a loss due to natural disasters, then the income norm related to such activity shall be reduced to reflect such loss.

(5) Taxpayers carrying out agricultural activities for which the net income is determined based on income norms and those for which the tax is computed according to provisions in art. 74, para (4), have the obligation to fill in only the receipts part from the Journal – Register for receipts and payments, according to the relevant accounting provisions drafted for this purpose.

(6) Starting with the following tax year, taxpayers for which the net income is determined based on income norms as well as those for which the tax is computed according to provisions in art. 74, para (4), and which in the preceding fiscal year registered a gross annual income greater than the lei equivalent of 100.000 EUR, have the obligation to determine the annual net income using a real system. Those taxpayers have the obligation to fill in correspondingly and file the declaration regarding estimated income/income norm until 31st of January inclusive. The exchange rate used for determination of the lei equivalent of 100.000 EUR, is the annual average exchange rate communicated by the National Bank of Romania at the end of the fiscal year.

ART. 73

Option to determine the annual net income by using the data from the simple entry accounting

(1) A taxpayer carrying out an agricultural activity, provided in art 71, may elect to determine the net income from such activity based on the data from the simple entry accounting, as provided in Article 48.

(2) The provisions regarding the option provided in Article 51 (2) and (3), shall also apply in case of taxpayers specified in para (1).

ART. 74

Calculation and payment of tax for incomes from agricultural activities

(1) The tax on the net income from agricultural activities shall be computed by applying a 16% rate on the net income, determined on the basis of income norms and as well when using a real system, and the tax is final.

(2) Any taxpayer carrying out an agricultural activity, specified in Article 71, for which the income is determined based on income norms, have the obligation to submit, on an annual basis, an income statement to the competent tax authority, by the 25th of May inclusive of the fiscal year, for the current year. In case of an activity which a taxpayer begins to carry out after the 25th of May, the income statement shall be submitted within 15 days, inclusive, after the date when the taxpayer begins to carry out his activity.

(3) In case of a taxpayer who determines the net income from agricultural activities based on the data from the simple entry accounting, such taxpayer shall have the obligation to make advance payments related to such incomes to the state budget by the time limits provided in Article 82 (3).

(4) Starting with 1st January 2009, in case of taxpayers deriving cash incomes from agriculture, according to the provisions of art 71, letter d), by selling the products to specialized collection units, industrial processing units or to other units for being used as such, the tax shall be computed by withholding after applying a 2% rate on the value of the supplied products. The tax is final.

(5) The procedure for applying provisions of para (4) is established by norms issued by the Ministry of Agriculture, Forestry and Rural Development, with approval of the Ministry of Public Finance.

(6) The taxes withheld at source by payers in case of incomes derived from sale of movable goods representing waste from the business patrimony, as provided at art. 78, para (1), letter f), computed by applying a 16% rate on the gross income, are pre payments on the account of the annual tax due by taxpayers deriving individually or in association incomes from agricultural activities determined using a real system based on data from the simple entry accounting system. The pre payments will be taken into account at the determination of the annual tax by the competent authorities.

CHAPTER VIII

Incomes from prizes and from gambling

ART. 75

Definition of incomes from prizes and from gambling

(1) The incomes from prizes shall include incomes from prize competitions, others than those provided in Article 42, as well as from promoting the products/services as a result of the commercial practices, according to the law.

(2) The incomes from gambling shall include gains derived as a result of gambling, including jack-pot-type games defined according to the methodological norms.

ART. 76

Determination of net income from prizes and gambling

The net income is the difference between the incomes from prizes or gambling and the amount representing non-taxable income.

ART. 77

Withholding of tax on incomes from prizes and from gambling

- (1) The incomes from prizes shall be taxed, by withholding at source, at a 16% rate on the net income derived from each prize.
- (2) The incomes from gambling shall be taxed, by withholding as source at a 25% rate on the net income. The net income shall be computed at the level of the gains derived in one day from the same organizer or payer.
- (3) The payers of incomes shall be obliged to compute, withhold and pay the tax.
- (4) The incomes obtained from prizes and gambling, in cash and/or in kind, which are below the value of the non-taxable amount of lei 600 obtained by the taxpayer:
 - a) for each prize;
 - b) for gambling gains, obtained from the same organizer or payer in a single day.
- (5) The tax computed and withheld at the moment of payment is a final tax.
- (6) The income tax computed and withheld is paid to the state budget until the 25th inclusive of the month following the month when the income was withheld.

CHAPTER VIII^{^1}

Incomes from transfer of immovable properties from personal patrimony

ART. 77^{^1}

Definition of income from transfer of immovable properties from personal patrimony

- (1) At the transfer of ownership right and of its divisions held on constructions of any kind and their related lands, and on any kind of land without buildings, according to legal acts concluded between living, taxpayers shall pay a tax computed as follows:
 - a) for constructions of any kind and their related lands, as well as for the lands of any kind without constructions acquired within a period not exceeding 3 years, inclusive:
 - 3% up to a value of lei 200.000 inclusive;
 - over lei 200.000, 6,000 lei + 2% computed at a value exceeding lei 200.000 inclusive;
 - b) for real estates described at letter a) acquired for more than 3 years:
 - 2% up to a value of lei 200.000 inclusive;
 - over lei 200.000, 4.000 lei + 1% computed at a value exceeding lei 200.000 inclusive.
- (2) The tax provided in para (1) shall not be payable in the following cases:
 - a) upon acquiring ownership right over any kind of lands and constructions, following restoration of ownership right pursuant to special laws;
 - b) upon acquiring the ownership right as donation between relatives and in-laws up to the 3rd degree inclusive, and as well among spouses.
- (3) For transmitting the ownership right and its divisions as inheritance the tax provided in paragraph (1) shall not be payable, if the inheritance is debated upon and completed within 2 years as of the death of the author of inheritance. In case of failure to complete the succession proceedings within the above-mentioned time limit, the inheritors must pay a 1% tax calculated at the value of the estate.
- (4) The tax provided in para (1) and (3) is computed at the value declared by the parties in the act whereby the ownership right or its divisions are transferred. In case the declared value is lower than the indicative value established by the expertise drawn up by the public notary chamber, the tax shall be computed at the level of the value established by the expertise, except for transactions concluded between relatives and in-laws up to the 2nd rank inclusive, and as well between spouses, in

which case the tax shall be computed at the value declared by the parties in the act whereby the ownership right is transferred.

(5) The public notary chamber shall update at least once a year the expertise on the circulation value of the immovable assets that shall be communicated to the territorial directorates of the Ministry of Public Finance.

(6) The tax provided in paragraph (1) and (3) shall be computed and cashed by the notary public before the authentication of his act or the authentication for completing the succession depending on the case. The tax computed and cashed shall be transferred by the 25th of the month following the month when it was withheld. In case the transfer of the ownership right and of its divisions, for cases provided in paragraphs (1) and (3), is ruled by a judgment of the court or by another procedure, the tax provided in paragraphs (1) and (3) shall be computed and collected by the competent tax authority. The courts that deliver final and irrevocable judgments shall communicate to the competent tax authority the judgment and the related documentation within 30 days from the date when the judgment is final and irrevocable. For other procedures than the notary or judicial procedure, within maximum 10 days from the date of transfer, the taxpayer has the obligation to declare at the competent tax authority the income obtained, for determination the tax. For registration of the rights acquired based on acts authenticated by public notaries or for inheritance certificates or, depending on the case, for judgments and for other documents in other cases, the registrars at the land offices shall verify that the tax payment obligation provided in paragraphs (1) and (3) is met and, in case evidence of payment of such tax is not produced, they shall reject the registration application until the tax is paid.

(7) The tax established under the terms of paragraph (1) and (3) is distributed as follows:

- a) a 50% share is income for the consolidated budget;
- b) a 50% share is income for the territorial – administrative budget on the territory where the immovable property that was alienated is located

(8) The procedure for computation, collection and payment of the tax charged under the terms of paragraphs (1) and (3), and as well the declaration obligations shall be established by methodological norms issued by joint order of the minister of public finance and of minister of justice, after the consultation with the National Union of Public Notaries from Romania.

ART. 77[^]2

Rectification of the tax

If, after the authentication of the act or drawing up the authentication for completing the succession proceedings by the notary public, errors or omissions are found regarding computation and collection the tax provided in Article 77[^]1 para (1) and (3), the notary public shall notify the competent tax authority on this situation, by providing reasons for the causes of errors or omissions. The competent tax authorities shall issue taxation decisions for the taxpayers provided in Article 77[^]1 para (1) and (3), for collection of the taxes. The liability of the notary public for the failure to collect or for the miscalculation of the tax provided in Article 77[^]1 para (1) and (3) shall be engaged only in case it can be proved that the failure to fully or partly cash can be blamed on the ill-intentioned notary public that failed to meet this obligation.

ART. 77³

Declarative obligations of the public notaries regarding transfer of immovable properties

The notary public has the obligation to submit quarterly to the territorial tax authority an information declaration regarding the transfers of real estates, including the following elements for each transaction:

- a) the contracting parties;
- b) the value written in the transfer document;
- c) the tax on income from transfer of immovable properties from personal patrimony;
- d) the notary fees related to the transfer.

CHAPTER IX

Incomes from other sources

ART. 78

Definition of incomes from other sources

(1) In this category the following incomes shall be included, but they are not limited to:

- a) insurance premiums borne by an independent individual or by any other entity, for an individual with which the bearer does not have a relationship generating incomes from wages, according to Chapter III of the present title;
- b) gains received from insurance companies, as a result of the insurance contract concluded between the parties on the occasion of the depreciation drawings;
- c) incomes, representing price differences for certain goods, services and other rights, received by individual pensioners, former employees, according to labor contracts clauses or based on special laws;
- d) incomes received by individuals representing fees from commercial arbitration activities;

e) *** Repealed

f) incomes derived from sale of waste through waste recycling collection centers for metal, paper, glass and other similar. Incomes derived from sale of movable goods through recycling collection centers for dismantling according to national programs financed from the State Budget or from other public funds according to provisions in art. 42, letter a¹) and letter g) are not taxable.

(2) Incomes from other sources are any incomes identified as being taxable, that are not subject to the categories provided in Article 41 letters a) - h), others than the incomes which are non-taxable in accordance with the present title, and as well those mentioned in the norms drafted for the application of this article.

ART. 79

Computation of tax and payment deadline

(1) Income tax is computed by withholding at source by income payers at the moment of payment, by applying a 16% rate on the gross income.

(2) The tax computed and withheld is a final tax.

(3) The tax withheld shall be paid to the state budget until the 25th day, inclusive, of the month following the month when the income was withheld.

ART. 79¹)

Definition and taxation of incomes with an unidentified source

Any incomes established by tax authorities according to the Fiscal Procedure Code having an unidentified source are taxed at a 16% rate on the taxable base adjusted according to indirect procedures and methods for reconstitution of incomes and expenses. Through the notice of assessment tax authorities shall determine the amount of taxes and accessories.

CHAPTER X

Taxable annual net income

ART. 80

Determination of the taxable annual net income

(1) The taxable annual net income is determined for each source from the categories of incomes mentioned in Article 41 letters a), c) and f) by deducting from the annual net income the carried-over fiscal losses.

(2) Income from categories provided in Article 41 letters a), c) and f), derived during a part of a year or during different periods representing fractions of the same year, is considered annual income.

(3) The annual fiscal loss registered for each source from independent activities, from granting the use of goods and from agricultural activities shall be carried over and offset against incomes from the same income source from the next 5 fiscal years.

(3¹) Losses from the income categories mentioned at art. 41 letters a), c) and f) originated abroad, shall be carried over and offset during the next 5 fiscal years against incomes derived abroad of the same nature and source, for each country.

(4) Rules for carrying over losses:

a) the carrying over is made chronologically, depending on the length in time of the loss, during the next 5 consecutive years;

b) the right to carry over is personal and non-transmissible;

c) the carried over loss which is not compensated after the end of the period provided in letter a) is a final loss of the taxpayer.

ART. 80¹

Determination of the net annual taxable gain

(1) The net annual taxable gain from transfer of securities, other than shares and securities in case of closed companies, is determined as a difference between the net annual gain and losses carried – over from the preceding fiscal years.

(2) The net annual loss from transfer of securities, other than shares and securities in case of closed companies, established according to the declaration regarding the income derived, is offset against the annual net gains derived in the following 7 consecutive fiscal years

(3) Rules for carrying over losses:

a) the carrying over is made chronologically, depending on the length in time of the loss, during the next 7 consecutive years;

b) the right to carry over is personal and non-transmissible;

c) the carried over loss which is not compensated after the end of the period provided in letter a) is a final loss of the taxpayer.

(4) The net annual losses from transfer of securities, other than shares and securities in case of closed companies, originated abroad is carried forward and compensated with income of the same nature and source derived abroad, for each country, in the following 7 fiscal years.

ART. 81

Estimated income/income norm statements

(1) Taxpayers and associations without legal personality, beginning an activity during the fiscal year, have the obligation to submit to the competent tax authorities a statement regarding estimated incomes and expenses to be obtained during the fiscal year, within 15 days from beginning the activity. Taxpayers obtaining incomes for which the tax is withheld at source shall be excepted from provisions of this paragraph.

(2) Taxpayers deriving incomes from granting the use of goods from the personal patrimony other than incomes from leasing of land for which the tax is final, have the obligation to submit an estimated income/income norm statement, within 15 days from the date when the contract between the parties is concluded. The estimated income/income norm statement is filed to the tax authority at the same time with registration of the contract concluded between the parties. Taxpayers deriving income from leasing of agricultural goods from personal patrimony have the obligation to register with the competent tax authorities the contract concluded between the parties and the subsequent amendments within 15 days from its concluding/amending.

(3) Taxpayers registering losses during the previous year and those deriving incomes for periods shorter than the fiscal year, and as well those who, from objective reasons, estimate that they will derive incomes which differ by at least 20% from the previous year incomes, shall submit an estimated income/income norm statement at the same time with the statement regarding the income derived.

(4) Taxpayers determining the net income based on income norms, and those determining their expenses based on a forfeit system, and which exercised their option to determine the net income using a real system, shall submit an estimated income/income norm statement filled in accordingly.

ART. 82

Determination of tax pre payments

(1) Taxpayers obtaining incomes from independent activities, from granting the use of goods, except incomes derived from lease of land, and as well incomes from agricultural activities, have the obligation to make during the year advance payments representing tax, except for incomes for which advance payments are withheld at source.

(2) The competent tax authority shall determine the advance payments for each income source, taking the estimated annual income or the net income derived during the preceding year as base for computation, depending on the case, by issuing a decision which shall be communicated to the taxpayers according to the law. In case of tax assessments carried out after expiry of the payment time limits provided in paragraph (3), taxpayers have the obligation to make advance payments at the level of the amount due for the last payment time limit of the preceding year. The difference between the annual tax computed on the net income derived during the

previous year and the amount representing advance payments owed by the taxpayer at the level of the fourth quarter of the previous year, shall be allocated to the following time limits in the fiscal year. For estimated income/income norms statements filed in December, advance payments shall no longer be determined. The net income corresponding to the period remaining until the end of the year is subject to taxation, according to the taxation decision issued based on the statement regarding the income derived.

The advance payments for incomes from granting the use of goods, except incomes from lease of lands, shall be determined by the tax authorities as follows:

a) based on the contract concluded between the parties; or
b) based on the incomes determined according to the data in the simple entry accounting, corresponding to the option. In case that, according to the clauses in the contract, the income from granting the use of goods is the lei equivalent of an amount denominated in foreign currency, the estimated annual income shall be determined based on the foreign exchange rate on the foreign currency market as communicated by the National Bank of Romania, existing in the day preceding the day when the taxation is carried out.

(3) The advance payments shall be made in 4 equal installments, until 25th inclusive of the last month from each quarter. No advance payments are due in case of taxpayers deriving incomes from lease of lands, and which have exercised their option for determination of the net income using a real system. In this case, payment of the annual tax is made according the notice of assessment issued based on the income statement regarding the income derived. Taxpayers determining the net income from agricultural activities according to Articles 72 and 73, shall owe advance payments to the state budget for the tax related to such income in two equal installments, as follows: 50% of the tax until 25th of September inclusive, and 50% of the tax until 25th of November inclusive.

(4) The time limits and the procedure for issuing the decisions for advance payments shall be established by order of the president of the National Tax Administration Agency.

(5) For determination of advance payments, the tax authority shall use the estimated annual income as base for computation, in all situations where it was submitted a statement regarding the estimated income/income norm for the current year, or the net income from the statement regarding the income derived in the previous fiscal year, depending of the case. When determining the advance payments, the 16% tax rate provided in Article 43 para (1) shall be used.

(5[^]1) The tax withheld at source by the payers for incomes provided at art. 78 para (1), letter f), is determined by applying a 16% rate on the gross income, and represents a pre payment for the annual tax due by taxpayers deriving, individually or in a form of association, income from independent activities, income from granting the use of goods, income from agricultural activities determined using a real system.

(6) The advance payments established based on the contracts concluded between the parties where the rent is expressed in lei, according to the provisions of Article 63 para (2), and as well for incomes from independent activities and agricultural activities assessed on the basis of income norms, are a final tax.

(7) In case of cancellation during the year of the contracts concluded between the parties where the rent is expressed in lei, pre payments determined according to provisions of art. 63, para (2), shall be recomputed by the competent tax authorities at the taxpayer's request based on relevant documents

(8) For recalculation of the pre payments, taxpayers deriving incomes from independent activities and/or income from agricultural activities and which during the fiscal year terminate their activity, and as well those which enter in a temporary suspension of work according to the law, have the obligation to file at the competent tax authorities a statement, together with the relevant documents, within 15 days from the date the event occurred.

(9) The procedure to apply provisions of para (8) is determined by Order of the president of the National Tax Administration Agency in accordance with provisions of the republished Government Ordinance no. 92/2003 as amended and completed.

ART. 83

Statement regarding the income derived

(1) Taxpayers deriving, individually or in a form of association, incomes from independent activities, incomes from granting the use of goods, incomes from agricultural activities determined using a real system, have the obligation to submit a statement regarding the income derived to the competent tax authority for each fiscal year, until 25th of May inclusive of the year following the year when the income is derived. The statement regarding the income derived shall be filled out for each source and category of income. For the incomes earned in a form of association, the income declared shall be the net income/loss distributed by the association.

(1[^]1) The declaration regarding the income derived shall be filled out also by taxpayers provided in art. 63, para (2), case in which pre payments of tax are considered for determination of the annual tax due for situations in which changes of the clauses of the contract occur, except for art. 82 para (7).

(2) The statement regarding the income derived is filled in and filed at the competent tax authority for each fiscal year until 25th of May inclusive of the year following the year when the annual net gain/annual net loss was realized and was generated by:

- a) transactions with securities, others than shares and securities in case of closed companies;
- b) forward foreign currency sale purchase operations based on contracts, and any other operations of this kind.

(2[^]1) The quarterly tax assessment declaration is filled in for the net gain/net loss determined at the end of each quarter as generated following transactions with securities, other than shares and securities in case of closed companies.

(3) For the following categories of income, declarations regarding the income derived are not required

a) net incomes determined based on income norms, except for taxpayers who submitted estimated income /income norm statement in December and for which no advance payments were established, according to the law;

b) incomes from the activities mentioned in art. 52, para (1), letters a) – c) for which the taxation is final according to provisions in art. 52[^]1;

b[^]1) incomes from granting the use of goods as lease of land for which the taxation is final according to provisions in Article 62 para (2[^]1);

c) incomes from granting the use of goods provided in art. 63, para (2) for which the taxation is final, except for taxpayers submitting estimated income/income norm declaration in December and for which no advance payments were established, according to the law;

d) salary incomes and incomes assimilated to salaries, for which the information is included either in the declaration regarding computation and withholding of the tax for

- each beneficiary of income, or in the monthly statements filed by the taxpayers provided in Article 60;
- e) incomes from investments, except for those provided in paragraph (2), and as well incomes from prizes and from gambling, for which the taxation is final;
 - f) pension incomes;
 - g) incomes from agricultural activities for which the taxation is final, according to provisions in Article 74 para (4);
 - h) incomes from the transfer of immovable property;
 - i) incomes from other sources.

ART. 84

Determination and payment of the annual tax due

(1) the annual tax due is determined by the competent tax authority based on the declaration regarding the income derived, by applying the 16% rate on each of the following:

- a) taxable annual net income;
- b) annual net gain from the transfer of securities, other than shares and securities in case of closed companies;
- c) annual net gain from forward sale-purchase foreign currency operations based on a contract, as well as any other operations of this kind.

(1[^]1) *** Repealed

(2) Taxpayers may decide upon the destination of an amount of up to 2% of the tax payable for the taxable annual net income payable, annual net gain from transfer of securities other than shares and securities in case of closed companies, annual net gain from forward sale-purchase foreign currency operations based on a contract as well as any other operations of this kind, for supporting the non-profit entities set up and functioning according to the law, churches, as well as for granting private scholarships, under the law.

(3) The competent tax authority have the obligation to compute, withhold and transfer the amount of up to 2% of the tax payable for:

- a) taxable annual net income;
- b) annual net gain from the transfer of securities, other than shares and securities in case of closed companies;
- c) annual net gain from forward sale-purchase foreign currency operations based on a contract, as well as any other operations of this kind.

(4) The procedure for applying provisions of paragraphs (1), (2) and (3) is established by order of the president of the National Tax Administration Agency, in accordance with provisions of Government Ordinance No 92/2003 regarding Fiscal Procedure Code, republished, as amended and completed.

(5) *** Repealed

(6) *** Repealed

(7) The tax authority determines the annual tax due based on the declaration regarding the income derived and issues the notice of assessment on the date and in the format established by order of the president of the National Tax Administration Agency.

(8) Tax differences to be paid according to the notice of assessment are payable within 60 days at most from the date of communication of the notice of assessment. Within this time limit no amounts are computed and due as provided for in connection with collection of budgetary claims.

CHAPTER XI
Joint property and associations without legal personality

ART. 85
Income from goods or rights jointly held

The net income obtained from the exploitation of goods or rights of any kind, held jointly, shall be considered as being obtained by the owners, usufruct beneficiaries, or other legal holders, registered in an official document, and shall be allocated in proportion to the shares which they hold in such property or equally, in case these are not known.

ART. 86
Rules regarding the associations without legal personality

(1) Provisions in this article shall not apply to:

- associations without legal personality provided in Article 28;
- investment funds established as associations without legal personality;
- associations with a legal person payer of profit tax, in which case only the fiscal regulations of Title II are applicable;
- privately managed pension funds and optional pension funds established according to provisions of specific legislation on these matters;
- association without legal personality when associate members derive income provided in art. 49

(2) Within each association without legal personality established according to law, associates have the obligation to conclude contracts of association in writing at the beginning of activity, which shall provide information regarding:

- a) the contracting parties;
- b) the object of activity and the head office of the association;
- c) the in kind and in rights contribution of each associate;
- d) participation percentage for each of the associates to incomes or losses from the association corresponding to their contributions;
- e) designation of the associate who will be responsible for fulfilling the obligations of the association before the public authorities;
- f) the conditions for termination of the association. The contributions of the associates according to the contract of association shall not be considered incomes of the association. The contract of association shall be registered with the territorial tax authorities within 15 days from the date of conclusion of such contract. In case the contracts do not provide the data required according to this paragraph, the tax authority shall have the right to reject the registration of contracts.

(3) In case the members of the association are related up to the 4th degree inclusive, the parties have the obligation to submit evidence that they participate in deriving incomes with goods or rights over which they hold property rights. Individuals who have acquired limited capacity of exercise may also be members of the association.

(4) Associations have the obligation to submit to the competent tax authority by 15th March of the following year, the annual income statements according to the model established by the National Tax Administration Agency, which shall also include the distribution of net income/loss on each of the associates.

(5) The annual income/loss, derived by the association, shall be distributed to associates in proportion to the participation percentage share corresponding to their contribution, according to the contract of association.

(6) The fiscal treatment of income obtained from the association, in other cases than the associations with a legal person, shall be established in the same manner as for the category of incomes from which it is a part.

(7) *** Repealed

(8) *** Repealed

(9) The income apportioned to an individual from an association with a legal entity microenterprise, which do not generate a legal entity, determined with observance of rules established in tile IV¹ is assimilated at the level of the individual for taxation purposes with income from independent activities. For determination of the annual net income compulsory contributions are deductible.

(10) The tax withheld by the legal person on the account of the individual for incomes derived from an association with a Romanian legal person that do not generate a legal person, represents a pre payment on the account of the annual income tax. The obligation to compute, withhold, and pay the tax determined according to the methodology established in the laws regarding the tax on the microenterprise income, lies with the Romanian legal person.

CHAPTER XII

International fiscal aspects

ART. 87

Incomes of non-resident individuals from independent activities

(1) The non-resident individuals carrying out independent activities through a permanent establishment in Romania shall be taxed, according to the present title, on the taxable annual net income from independent activities, which is attributable to the permanent establishment.

(2) The net income from an independent activity which is attributable to a permanent establishment is determined according to Article 48, observing the following conditions:

a) only incomes attributable to the permanent establishment are included in the taxable incomes;

b) only expenses related to obtaining such incomes are included in the deductible expenses.

ART. 88

Incomes of non-resident individuals from dependent activities

The non-resident individuals carrying out dependent activities in Romania shall be taxed, according to provisions of Chapter III of the present title.

ART. 89

Other incomes of non-resident individuals

(1) The non-resident individuals deriving other incomes than those provided in Articles 87, 88, and Title V shall owe tax as provided in the rules of the present title.

(2) Incomes subject to taxation from the categories mentioned in paragraph (1) are determined for each source, according to the specific rules of each category of income and the tax is final.

(3) Except for income tax payments withheld, taxpayers which are non-resident individuals deriving incomes from Romania according to the present title, have the obligation to declare and pay the tax corresponding to each income source, either directly or through a representative, according to the Government Ordinance No 92/2003 on the fiscal procedure code, republished as amended and completed.

ART. 90

Incomes derived from abroad

(1) Individuals provided in Article 40 para (1) letter a), and those who fulfilling the condition provided in Article 40 para (2) are liable to pay tax for incomes derived from abroad.

(2) The incomes derived from abroad are subject to taxation by applying the tax rates to the computation base determined according to specific rules for each category of income, depending on the nature of the income.

(3) The taxpayers deriving incomes from abroad according to paragraph (1), have the obligation to declare such incomes according to the specific statement until 25th May of the year following the year when the income is derived.

(4) *** Repealed

(5) *** Repealed

(6) The tax authority is determining the annual tax due and issues the notice of assessment within the time limit and in the format established by order of the president of the National Tax Administration Agency.

(7) The tax differences to be paid according to the annual notice of assessment are to be paid within 60 days from the date the notice of assessment was communicated, period for which are not due the amounts established according to the specific provisions regarding collection of budgetary claims.

ART. 91

External fiscal credit

(1) The taxpayers resident individuals, who, for the same income and during the same taxable period, are subject to income tax both on the territory of Romania and abroad, shall have the right to deduct from the income tax payable in Romania the tax paid abroad, hereinafter called external fiscal credit, within the limits provided in the present article.

(2) The external fiscal credit shall be granted provided that the following conditions are cumulatively satisfied:

a) are applicable provisions in the Convention for the avoidance of double taxation concluded between Romania and the foreign state where the tax was paid;

b) the tax paid abroad for the income derived abroad was actually paid directly by the individual or by his/her legal representative, or it was withheld at source by the payer of income. Payment of the tax abroad is proved with a document issued by the competent authority of that foreign state:

c) the income for which the fiscal credit is granted is part of one of the categories of income provided at art. 41.

(3) The external fiscal credit is granted at the level of the tax paid abroad corresponding to the income from the foreign source, but it may not exceed the part of the income tax payable in Romania, related to the taxable income from abroad. In case the taxpayer in question derives incomes from abroad from several states, then the external fiscal credit permitted to be deducted from the tax payable in Romania shall be computed, according to the above-mentioned procedure, for each country and for each category of income.

(3¹) After Romania's date of accession to the European Union, for savings incomes defined in Article 124⁵ derived by individuals that are residents in those Member States with a transitional period specified in Article 124⁹, the method of elimination of double taxation mentioned in art. 124¹⁴ para. (2) shall be applied.

(4) *** Repealed

(5) For computation of the external fiscal credit, the amounts denominated in foreign currency shall be converted at the annual average exchange rate of the foreign exchange market communicated by the National Bank of Romania for the year when the income is obtained. The incomes from abroad derived by the resident individuals, and as well the related tax denominated in the monetary units of that state, but which are not listed by the National Bank of Romania, shall be converted as follows:

a) from the monetary unit of the state of source into a foreign currency of international circulation, such as US dollars or Euros, by using the rate of exchange of the state of source;

b) from the foreign currency of international circulation into lei, by using the average annual exchange rate for such currency, as communicated by the National Bank of Romania, for the year when such incomes are obtained.

ART. 92 * Repealed**

CHAPTER XIII

Declarative obligations for payers of incomes withheld at source

ART. 93

Declarative obligations for payers of incomes withheld at source

(1) Payers of incomes with taxes withheld at source shall be obliged to compute, withhold, pay and declare the tax withheld at source by the time limit of its payment, inclusive, with the exceptions provided in the present title.

(2) Payers of incomes with taxes withheld at source shall be obliged to file a statement regarding computation and withholding of tax for each beneficiary of income to the competent tax authority until the last day of February inclusive, of the current year for the expired year.

(3) *** Repealed

CHAPTER XIV

Transitory and final provisions

ART. 94

Transitory provisions

(1) The exemptions from payment of income tax provided in the law regarding protective measures as a result of collective lay-offs, for the personnel laid off, shall remain valid until the date when they expire.

(2) Losses registered by taxpayers during the exemption period shall not be compensated with the incomes obtained from the other categories of incomes in such years and shall not be carried over, representing final losses of the taxpayers.

(3) Provisions regarding fulfillment of the condition provided in Article 40 para (2), shall apply starting with 1st of January 2004.

(4) Provisions in art. 49 para (2[^]1), art. 50 para (1) letter a) and para (2) letter a), will apply correspondingly starting with 1st of July 2010

(5) Provisions in art. 55, para (3), letter h) are applicable starting with the rights corresponding to July 2010. Income representing:

- nursery tickets provided according to the law,

- holiday tickets provided according to the law

- amounts representing compensation payments computed based on net average salaries of the entity, received by individuals whose labor agreements have been terminated because of lay-offs according to the law, and as well amounts representing compensation payments computed based on net average salaries of the entity, received by civilians from the defense industry, public order, and national security at termination of their employment or service agreement following lay-offs and restructuring according to the law;

- amounts representing compensation payments computed based on the net monthly payroll granted to military personnel in the reserve or at termination of an individual contract following restructuring, and as well, aids in cash determined depending on the monthly payroll granted when transferred in the reserve or directly at the retiring with pension wrights or for those which do not qualify for pension, and as well aids or compensation payments received by policemen in similar situations, and for which the amounts shall be determined based on the net monthly salary granted according to the law.

become taxable starting with payments made for July 2010.

(6) The procedure to apply provisions in para (4) is determined by order of the president of the National Tax Administration Agency according to provisions of Government Ordinance no 92/2003 republished as amended and completed.

(7) The net annual taxable income, the net annual gain from transfer of securities other then shares and securities in case of closed companies, and as well the net annual gain from sale-purchase forward hard currency operations based on a contract, and from any other operations of this kind derived by individuals in 2010, shall be declared in the statement regarding the income derived, and determination and payment of the tax is made based on the notice of assessment,

(8) Starting with 2012, taxpayers carrying out activities regarding transportation of persons and of goods in a taxi regime and which derive income from independent activities for which the net income was determined using a real system in 2011 according to provisions in art. 69 of law 38/2003 regarding taxi and rental transportation as amended and completed, may choose for determination of the annual net income based on income norms.

(9) In case of taxpayers that carried out activities during 2011, the option may be exercised by filling in the declaration regarding estimated income/income norm with information regarding determination of the net annual income based on income norms and filing it at the competent tax authority until 31st of January inclusive.

(10) The tax data sheet with information regarding computation of the tax on salary incomes for year 2011 shall be filed until the last day of February 2012.

(11) Provisions in art. 59 and art. 93, para (2), shall apply starting with salary and assimilated to salary income rights afferent for January 2012.

(12) Provisions in art. 48, para (4), letter c¹) apply only for fixed assets acquired starting with 1st of January 2012.

(13) For incomes derived based on contracts in progress existing at 1st October 2011 for which at that date were applicable provisions in art. 52, the obligations regarding computation, withholding and payment of the tax representing pre payments are those valid at the date of income payments.

(14) Income from leasing of land derived during 2011 shall be declared in the statement regarding the income derived that shall be filed at the competent tax authority until 25th of May 2012. Payment of the tax shall be made based on the annual notice of assessment. In case of leasing of land contracts in progress existing at 1st of January 2012, taxpayers deriving income from leasing of land have the obligation to exercise in writing their option regarding the taxation method chosen, by concluding an additional contract before the first payment date and register it with the competent tax authorities within 15 days from its conclusion.

(15) Proposals for 2012 of the Ministry of Regional Development and Tourism regarding the levels of annual norms of income for one room to be rented in case of incomes from renting between 1 to 5 rooms for touristic purposes from the rooms existing in privately owned homes, shall be transmitted to the Ministry for Public Finances until 10th of January 2012. General Directorates for Public Finances at County level and at Bucharest level, depending on the case, have the obligation to determine and publish the annual norms of income until 15th of January 2012 based on the criteria established by joint order of the minister of regional development and tourism and of the minister of public finances and on the proposals of the ministry of regional development and tourism.

ART. 95

Finalization of taxation for the fiscal year

(1) For finalization of the tax related to the income derived in the fiscal year 2006, necessary forms shall be drafted and approved by order of the ministry of public finance.

(2) For finalization of the tax related to the income obtained in a fiscal year, necessary forms shall be drafted and approved by order of the president of the National Tax Administration Agency.

ART. 96 *** Repealed

ART. 97 *** Repealed

ART. 98*** Repealed

ART. 99 *** Repealed

ART. 100 *** Repealed

ART. 101 *** Repealed

ART. 102 *** Repealed

TITLE IV

Tax on the incomes of micro-enterprises

ART. 112 ^1

Definition of micro-enterprises

Within the meaning of this title, a micro-enterprise is a Romanian legal person which cumulatively meets the following conditions on 31st December of the previous fiscal year:

- a) derived incomes, other than those provided at art. 112^2 para. (6);
- b) it has a number of 1 to 9 employees, inclusive;
- c) derived incomes not exceeding the equivalent in lei of EUR 100 000;
- d) the registered capital of the legal person is held by persons other than the state, and local authorities.

ART. 112^2

Option to pay tax on the incomes of micro-enterprises

(1) The tax provided in the present title is optional.

(2) Micro-enterprises, payers of profit tax, may elect to pay the tax provided by the present title beginning with the following fiscal year, if the conditions provided in Article 112^1 are met and if they have never been payers of tax on the incomes of micro-enterprises.

(3) For 2011, Romanian legal persons may elect for payment of the tax provided by this title if they meet at 31st of December 2010 the conditions provided at art. 112^1

(4) A newly established Romanian legal person may elect for payment of the tax on the incomes of micro-enterprises, beginning with the first fiscal year if the condition provided in Article 112^1 letter. d) is satisfied on the date of registration with the trade register and the condition provided in Article 112^1 letter. b) is satisfied within 60 days after the date of registration.

(5) Micro-enterprises shall no longer apply this system of taxation starting with year following the year when one of the conditions provided in art. 112^1 is not met.

(6) The Romanian legal persons may not elect the system of taxation provided by the present title if:

- a) they carry on banking activities;
- b) they carry on capital market, insurance, and re-insurance activities, with the exception of legal persons carrying on intermediation activities in these fields;
- c) they carry on gambling, consultancy and management activities;
- d) their registered capital is held by a shareholder or associate which is a legal person with over 250 employees.

(7) Micro-enterprises may opt for payment of the profit tax beginning with the next fiscal year. The option shall be expressed until 31st January of the fiscal year following the year for which the tax on incomes of the micro-enterprises was due.

ART. 112^3

Scope of application of tax

The tax established by the present title hereinafter referred to as tax on the incomes of micro-enterprises, shall apply on incomes from any source, with the exception of those provided in Article 112^7.

ART. 112⁴
Fiscal year

- (1) The fiscal year of a micro-enterprise shall be the calendar year.
- (2) In case of a micro-enterprise which is being established or ceases to exist, the fiscal year shall be the period during the calendar year when the legal person existed.

ART. 112⁵
Tax rate

The taxation rate on micro-enterprise's incomes is 3%.

ART. 112⁶
Taxation of micro-enterprises obtaining incomes exceeding EUR 100.000

As an exception from provisions in Article 112² para (5), and Article 112⁸ para (2) și (3), if, during a fiscal year, a micro-enterprise derives incomes exceeding EUR 100 000, it shall pay profit tax taking into account the incomes derived and expenses incurred from beginning of the fiscal year, without the possibility to benefit of provisions in this title during the next period of time. The computation and payment of the profit tax shall be effected starting with the quarter during which the limitation provided in this article is exceeded. The profit tax due is the difference between the profit tax computed from the beginning of the fiscal year until the end of the reporting period and the tax on micro-enterprise's income owed during that year.

ART. 112⁷
Taxable base

- (1) The taxable base for the tax on micro-enterprise's incomes shall be the incomes from any source, from which the following shall be subtracted:
- a) incomes corresponding to costs with the stock of products;
 - b) incomes corresponding to costs with services in progress;
 - c) incomes from the production of tangible and intangible assets;
 - d) incomes from subsidies for exploitation;
 - e) incomes from provisions and adjustments for depreciation or loss of value;
 - f) incomes resulting from reimbursement or cancellation of interest and/or penalties for late payment, which were non-deductible expenses for computation of the taxable profit;
 - g) incomes obtained from compensations from insurance/reinsurance companies, for damages of goods having the nature of stocks or own tangible assets
- (2) In case of a micro-enterprise acquiring electronic cash registers, their acquisition value shall be deducted from the taxable base in accordance with the supporting document in the quarter when electronic cash registers were put into operation, according to the law.

ART. 112⁸
Procedure for declaring the option

(1) Romanian legal persons profit tax payers, shall communicate to the territorial tax authorities the option for payment of the micro-enterprise tax according to provisions in 112², by filing of the declaration for amendments of registration information for legal persons, family associations and associations without legal personality, until 31st of January inclusive of the year for which the tax on micro-enterprise's income is paid.

(2) The legal persons established during a fiscal year shall make the option in writing in the registration application with the trade register. The option shall be final for that fiscal year.

(3) If, during a fiscal year, one of the conditions is no longer satisfied, the micro-enterprise shall have the obligation to maintain the taxation arrangement for that fiscal year, without the possibility of benefiting from the provisions of the present title for the following period, even if subsequently the conditions provided in Article 112¹ are satisfied.

ART. 112⁹

Payment of tax and filing of tax statements

(1) The calculation and payment of tax on micro-enterprise's incomes shall be made on a quarterly basis, until the 25th of the month following the quarter for which the tax is computed.

(2) The micro-enterprises have the obligation to submit a micro-enterprise income tax statement until the due date for payment of the tax.

(3) The fiscal obligation regulated by the present title is income of the State Budget.

ART. 112¹⁰

Taxation of individuals associated with a micro-enterprise

In case of an association without legal personality between a micro-enterprise and an individual resident or non-resident, the micro-enterprise have the obligation to compute, withhold and pay to the state budget the tax owed by applying a 3% rate on the incomes received by individuals from the association until 25th inclusive of the month following the quarter for which the tax is owed.

ART. 112¹¹

Provisions regarding depreciation

Micro-enterprises have the obligation to maintain records regarding fiscal depreciation according to art. 24 of title II.

TITLE V
Tax on the income obtained from Romania by non-residents and tax on foreign representative offices established in Romania

CHAPTER I
Tax on the income obtained from Romania by non-residents

Article 113
Taxpayers

Non-residents obtaining taxable income from Romania are required to pay tax according to the present Chapter and are hereinafter referred to as taxpayers.

Article 114
Scope of the tax

The tax provided by the present Chapter, hereinafter referred to as tax on the income obtained from Romania by non-residents, is applied to the gross taxable income obtained from Romania.

Article 115
Taxable income obtained from Romania

- (1) Taxable income obtained from Romania, regardless whether the income is received in Romania or abroad, is the following:
- a) dividends from a resident;
 - b) interest from a resident;
 - c) interest from a non-resident having a permanent establishment in Romania, if the interest is an expense of the permanent establishment;
 - d) royalties from a resident;
 - e) royalties from a non-resident having a permanent establishment in Romania, if the royalty is an expense of the permanent establishment;
 - f) commissions from a resident;
 - g) commissions from a non-resident having a permanent establishment in Romania, if the commission is an expense of the permanent establishment;
 - h) income from sporting and entertainment activities performed in Romania, regardless whether the income is received by the persons that are effectively participating in those activities or by other persons;
 - i) income from services of management or consultancy rendered in any field, if this income is obtained from a resident or if that income is an expense of a permanent establishment in Romania;
 - j) income representing remunerations received by non-residents acting as administrators, founders or members of the board of directors of a Romanian legal person;
 - k) income from services rendered in Romania, excluding the international transport and the services rendered in connection to this transport;
 - l) income from independent personal services rendered in Romania - physician, lawyer, engineer, dentist, architect, auditor and other similar professions - provided that it is obtained other than through a permanent establishment or in a period or

periods not exceeding in the aggregate 183 days in any 12 consecutive months ending in the calendar year concerned;

m) income from pensions received from the social security budget or from the state budget, provided that the monthly pension exceeds the threshold mentioned in Article 69;

n) *** Repealed

o) income from prizes awarded in contests organized in Romania;

p) income from gambling practiced in Romania, from each gambling activity, obtained from the same organizer in a single day of gambling;

q) income obtained by non-residents from the liquidation of a Romanian legal person. The gross income obtained from the liquidation of a Romanian legal person represents the excess amount of the distributions in money or in kind exceeding the contribution to the registered capital of the beneficial individual/legal person;

r) income obtained from the transfer of the trust table from the trustee to the non-resident beneficiary within a fiduciary operation.

(2) The following taxable income obtained from Romania is not taxable according to the present Chapter and is taxed according to Title II, III or IV¹, as the case may be:

a) income of a non-resident that is attributable to a permanent establishment in Romania;

b) income of a foreign legal person obtained from immovable property located in Romania or from the transfer of bonds, as defined in Article 7, paragraph (1), point 31, held in a Romanian legal person;

c) income of a non-resident individual obtained from a dependent activity performed in Romania;

d) income of a non-resident individual obtained from the rental of or other form of granting the right to use immovable property located in Romania, from the transfer of immovable property located in Romania, from the transfer of bonds, as defined in Article 7, paragraph (1), point 31, held in a Romanian legal person and from the transfer of securities, as defined in Article 65, paragraph (1), letter c);

e) income obtained by non-residents from an association established in Romania, including an association of a non-resident individual with a micro-enterprise.

(2¹) The tax treatment of the income obtained from the administration of the trust table by the trustee, other than his remuneration, is determined according to the nature of that income and is subject to taxation according to the present Title, Title II and III, as the case may be. The tax liabilities of the non-resident settlor are fulfilled by the trustee.

(3) Income obtained by non-resident unincorporated collective investment funds from the transfer of securities, as defined in Article 65, paragraph (1), letter c), as well as bonds, as defined in Article 7, paragraph (1), point 31, held directly or indirectly in a Romanian legal person, is not taxable in Romania.

(4) *** Repealed

(5) Income obtained by non-residents on foreign capital markets from the transfer of bonds, as defined in Article 7, paragraph (1), point 31, held in a Romanian legal person, as well as from the transfer of securities, as defined in Article 65, paragraph (1), letter c), which are issued by Romanian residents, is not taxable in Romania.

(6) Income obtained from a resident trustee by a non-resident beneficiary who is a non-resident settlor from the transfer of the trust table within a fiduciary operation is not taxable.

Article 116

Withholding tax on the taxable income obtained from Romania by non-residents

(1) The tax owed by non-residents for the taxable income obtained from Romania is calculated, withheld and paid to the state budget by the payers of the income.

(2) The tax owed is calculated by applying the following rates to the gross income:

a) 10% for interest and royalties, if the beneficial owner of the income is a legal person resident in a member state of the European Union or in one of the states of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway or a permanent establishment of an enterprise from a member state of the European Union or from one of the states of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, located in another member state of the European Union or of the European Free Trade Association. This tax rate is applied during a transitional period starting with the date of Romania joining the European Union until December 31, 2010, provided that the beneficial owner of the interest or royalties holds at least 25% of the value/number of shares in the Romanian legal person for a continuous period of at least 2 years ending on the date the interest or royalties are paid;

b) *** Repealed

c) 25% for the income obtained from gambling, as provided in Article 115, paragraph (1), letter p);

d) 16% in the case of any other taxable income obtained from Romania, as listed in Article 115.

(3) Notwithstanding paragraph (2), the tax to be withheld is calculated as follows:

a) for the income that represents remunerations received by non-residents acting as administrators, founders or members of the board of directors of a Romanian legal person, according to Article 57;

b) for the income from pensions received from the social security budget or from the state budget, according to Article 70.

(4) The tax is calculated and withheld at the moment the income is paid and is transferred to the state budget on or before the 25th day of the month following the one in which the income was paid. The tax is calculated, withheld and transferred in Romanian lei to the state budget at the foreign exchange market rate communicated by the National Bank of Romania, available on the day in which the tax is withheld for non-residents. In the case of distributed dividends that were not paid to shareholders or partners by the end of the year in which the annual financial statements were approved, the tax on dividends is declared and paid until January 25th of the next year.

(5) For the income in the form of interest on sight deposits/current accounts, term deposits, certificates of deposit and other saving instruments at banks or other credit institutions authorized and located in Romania, the tax is calculated and withheld by the payers of such income at the moment of the registration in the current account or in the deposit account of the holder, or at the moment of the redemption, in the case of certificates of deposit and saving instruments. The transfer of the tax for the income from interest is made on a monthly basis, on or before the 25th day of the month following the registration/redemption.

(6) The renewal of the saving deposits/instruments is assimilated with the creation of a new deposit/purchase of a new saving instrument.

(7) The tax on the capitalized interest is calculated by the payer of such income at the moment of the registration in the current account or in the deposit account of the

holder, or at the moment of the redemption, in the case of saving instruments, or at the moment the interest is changed into a loan or capital, as the case may be.

(8) The manner in which the income from the transfer of shares in a Romanian legal person is determined and/or declared shall be established in the secondary legislation.

(9) For any type of income, the tax to be withheld in accordance with the present Chapter is a final tax.

Article 117

Exemptions from the tax provided in this Chapter

The following income is exempted from the tax on the income obtained from Romania by non-residents:

a) *** Repealed

b) interest related to public debt instruments in Romanian lei and in foreign currency, income obtained from transactions with derivatives used for management operations of risks associated to obligations representing government public debt and income obtained from trading securities and bonds issued by the administrative - territorial units, in Romanian lei and in foreign currency, on the internal market and/or on the international financial markets, as well as the interest related to the instruments issued by the National Bank of Romania in order to achieve the monetary policy objectives and the income obtained from trading securities issued by the National Bank of Romania;

c) *** Repealed

d) prizes of a non-resident individual obtained from Romania as a result of his participation in publicly funded artistic, cultural and sporting national and international festivals;

e) prizes awarded to non-resident pupils and students at publicly funded competitions;

f) *** Repealed

g) income of foreign legal persons performing consultancy activities in Romania based on free financing agreements concluded by the Government of Romania/public authorities with other governments/public authorities or governmental or non-governmental international organizations;

h) dividends paid by an enterprise, which is a Romanian legal person or a legal person with the registered office in Romania, established under European law, to a legal person resident in another member state of the European Union or in one of the states of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, or to a permanent establishment of an enterprise from a member state of the European Union or from a state of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, located in another member state of the European Union or of the European Free Trade Association, are exempted from tax if the foreign legal person, which is the beneficiary of the dividends, cumulatively meets the following conditions:

1. has one of the forms of organization provided in Article 20¹, paragraph (4);
2. according to the tax law of the member state of the European Union or of one of the states of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, it is considered to be a resident of that state and under a convention for the avoidance of double taxation concluded with a

third state it is not considered to be a resident for tax purposes outside the European Union or the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway;

3. according to the tax law of a member state of the European Union or of one of the states of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, it pays a profit tax or a similar tax, without the possibility of an option or exception;

4. holds at least 10% of the registered capital of the enterprise, which is a Romanian legal person, for a continuous period of at least 2 years ending on the date the dividend is paid.

If the beneficiary of the dividends is a permanent establishment of a legal person resident in a member state of the European Union or in a state of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, located in another member state of the European Union or the European Free Trade Association, in order for the exemption to be granted the foreign legal person for which the permanent establishment is performing its activity has to cumulatively meet the conditions provided at the points from 1 to 4.

In order for this exemption to be granted, the Romanian legal person that pays the dividend has to cumulatively meet the following conditions:

1. is a company established according to the Romanian law and has one of the following forms of organization: "joint-stock company", "company limited by shares", "limited liability company";

2. it pays profit tax, according to the provisions of Title II, without the possibility of an option or exception.

In order for this exemption to be granted, the legal person with the registered office in Romania, established under European law, which pays the dividend, has to pay profit tax, according to the provisions of Title II, without the possibility of an option or exception.

i) *** Repealed

j) starting with January 1st, 2011, the income from interest or royalties, as defined in Article 124[^]19, obtained from Romania by legal persons resident in the member states of the European Union or the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, or by a permanent establishment of an enterprise from a member state of the European Union or from a state of the European Free Trade Association, meaning Iceland, the Principality of Liechtenstein, the Kingdom of Norway, located in another member state of the European Union or of the European Free Trade Association, is exempted from tax, if the beneficial owner of the interest or royalties holds at least 25% of the value/number of shares in the Romanian legal person for a continuous period of at least 2 years ending on the date the interest or royalties are paid;

k) *** Repealed

l) interest and/or dividends paid to pension funds, as defined in the legislation of the member state of the European Union or of one of the states of the European Free Trade Association;

m) income derived by non-resident individuals as a result of their participation in another state to a game of chance, whose fund earnings are also arising from Romania.

Article 118

Corroboration of the provisions of the Fiscal Code with those of the conventions for the avoidance of double taxation and with the European Union legislation

(1) For the purposes of Article 116, if a taxpayer is a resident of a country with which Romania has concluded a convention for the avoidance of double taxation, then the tax rate applied to the taxable income obtained from Romania by that taxpayer may not exceed the tax rate provided by the convention that is applied to that income. If there are different tax rates provided by the internal legislation and the conventions for the avoidance of double taxation, then the more favorable tax rates are applied. If a taxpayer is a resident of a country within the European Union, then the tax rate applied to the taxable income obtained from Romania by that taxpayer is the more favorable tax rate provided by the internal legislation, the European Union legislation or the conventions for the avoidance of double taxation. The European Union legislation is applied in Romania's relations with the member states of the European Union or of the European Free Trade Association.

(2) For the application of the provisions of the convention for the avoidance of double taxation and of the European Union legislation, the non-resident is requested to submit to the payer of the income, at the moment the income is obtained, a certificate of tax residence issued by the competent authority from his state of residence and, where appropriate, a sworn statement indicating that the beneficiary condition is satisfied when the European Union legislation is applied. If the certificate of tax residence and the statement indicating the beneficiary condition are not submitted in due time, then the provisions of Title V are applied. At the time of submitting the certificate of tax residence and, where appropriate, the statement indicating the beneficiary condition, the provisions of the convention for the avoidance of double taxation or of the European Union legislation are applied and the adjustment of the tax is made within the statutory period of limitation. To this regard, the certificate of tax residence must indicate that the beneficiary of the income had, during the period of limitation, the tax residence in the contracting state with which the convention for the avoidance of double taxation is concluded, in a member state of the European Union or of the European Free Trade Association, for the entire period of obtaining income from Romania. The quality of beneficiary for the purposes of applying the European Union legislation shall be proven by the certificate of tax residence and, where appropriate, by a sworn statement indicating that the following conditions have been cumulatively met: the minimum period of holding, the minimum participation requirement to the registered capital of the Romanian legal person, the inclusion in one of the forms of organization provided by Title II or Title V, as the case may be, the quality of taxpayer paying a profit tax or a similar tax, without the possibility of an option or exception. The certificate of tax residence submitted during the year for which the payments are made is also valid for the first 60 calendar days of the next year, unless the residence conditions have been modified.

(3) When a tax has been withheld in excess of the rates provided by the conventions for the avoidance of double taxation or the European Union legislation, the amount of the tax withheld in excess may be reimbursed on request to the beneficiary of the income or to the non-resident person.

In order for a tax withheld in excess on the income paid by a Romanian resident to non-resident persons to be reimbursed, an application for the reimbursement of the tax paid in excess has to be submitted to the payer of the income, which is a Romanian resident.

The application for the reimbursement of the tax has to be submitted by the non-resident person within the statutory period of limitation provided by the legislation of the Romanian state.

The reimbursement of the tax withheld in excess as compared to the tax burden resulting from the application of the provisions of the conventions for the avoidance of double taxation or of the European Union legislation, in conjunction with the internal legislation, as the case may be, is made irrespective of the situation of the tax liabilities of the taxpayer, which is the Romanian resident who pays the income to the non-resident and who is required to withhold the tax, according to the law.

(4) The model of the certificate of tax residence for persons that are residents of Romania, as well as the time limit for the submission of the tax residence documents by non-residents that are issued by the authority from their state of residence, shall be established by secondary legislation.

(5) The model of the "Set of questions for determining the fiscal residence of the individual on the arrival in Romania" and "Set of questions for determining the fiscal residence of the individual when leaving Romania" shall be established by secondary legislation.

Article 119

Annual statements regarding the withholding of tax

(1) The payers of income who are required to withhold taxes, except for the payers of income from wages, according to the present Title, are required to submit a statement regarding the calculation and withholding of tax for each beneficiary of the income to the competent tax authority until the last day of February, inclusively, of the current year for the ended year.

(1[^]1) After the date Romania has joined the European Union, the payers of income from interest are required to submit an informative statement regarding the payments of such income made to individuals resident in member states of the European Union. The statement shall be submitted no later than the 28th or the 29th day of February, inclusively, of the current year for information regarding the payments of interest made during the previous year. The model and content of the informative statement, as well as the procedure for declaring the income from interest derived from Romania by individuals resident in member states of the European Union, shall be approved by the National Agency for Fiscal Administration by means of an Order of the Minister of Public Finance, according to the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, republished, as further amended and completed.

(2) *** Repealed

Article 120

Certificates attesting the tax paid by non-residents

(1) Any non-resident may submit, personally or by way of a commissioner, an application to the competent tax authority requesting the issuance of the certificate attesting the tax paid to the state budget by himself or by another person, on his behalf.

(2) The competent tax authority is required to issue the certificate attesting the tax paid by non-residents.

(3) The form of the application and of the certificate attesting the tax paid by non-residents, as well as the conditions for submission and issuance, shall be established by secondary legislation.

Article 121
Transitional provisions

Income derived by the external contracting partners being non-resident individuals and legal persons and by their independent contractors from their activities performed for the achievement of the investment objective "the Cernavodă Nuclear Power Plant - Unit 2" shall be exempted from the taxes provided by the present Chapter until the above-mentioned objective is operated.

CHAPTER II
Tax on representative offices

Article 122
Taxpayers

Any foreign legal person, which has a representative office authorized to operate in Romania, according to the law, is required to pay an annual tax, according to the present Chapter.

Article 123
Determination of tax

(1) The tax on the representative office for a fiscal year shall equal the equivalent in Romanian lei of 4.000 EUR, determined for a fiscal year, at an exchange rate that is valid for the day on which the tax is paid to the state budget, which is communicated by the National Bank of Romania.

(2) In case of a foreign legal person, which incorporates or disincorporates a representative office in Romania during a fiscal year, the tax that is due for that year shall be determined in proportion to the number of months during which the representative office was operated in that fiscal year.

Article 124
Payment of tax and submission of tax statement

(1) Any foreign legal person is required to pay the tax on the representative office to the state budget, in two equal installments, until June 25th and December 25th, inclusively.

(2) Any foreign legal person, which has to pay the tax on the representative office, is required to submit an annual statement to the competent tax authority until the 28th or the 29th day of February of the year for which the tax is due.

(3) Any foreign legal person, which incorporates or disincorporates a representative office during a fiscal year, is required to submit a tax statement to the competent tax authority within 30 days after the date on which the representative office was incorporated or disincorporated.

(4) The representative offices are required to keep an accounting record, according to the legislation in force in Romania.

CHAPTER III

Taxation of the savings income obtained from Romania by individuals resident in member states and application of the exchange of information in relation to this category of income

Article 124¹

Definition of beneficial owner

(1) For the purposes of this Chapter, “beneficial owner” means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that the payment was not received or secured for his own benefit, that is to say that:

- a) he acts as a paying agent within the meaning of Article 124³, paragraph (1); or
- b) he acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an undertaking for collective investment in transferable securities (UCITS) authorized in accordance with the Council Directive no. 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to UCITS or on behalf of an entity referred to in Article 124³, paragraph (2) and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the operator communicates such information to the competent authority of the member state in which the entity is established; or
- c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 124², paragraph (2).

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither the provisions of paragraph 1, letter a) nor those of paragraph 1, letter b) apply to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 124², paragraph (2). If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 124²

Identity and residence of beneficial owners

(1) Romania shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 124⁷ to 124¹¹. Such procedures shall comply with the minimum standards set forth in paragraphs (2) and (3).

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards that vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

- a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in the state in which it is established and to the provisions of the Council Directive no. 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;

b) for contractual relations entered into, or transactions carried on in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name, address and, if there is one, the tax identification number allocated by the member state of residence for tax purposes. These details shall be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on the passport or on the official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or on any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, his identity shall be supplemented by a reference to his date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards that vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in the state in which it is established and to the provisions of the Council Directive no. 91/308/EEC;

b) for contractual relations entered into, or transactions carried on in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or an official identity card issued by a member state who declare themselves to be resident in a third country, residence shall be established by means of a certificate of tax residence issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the member state that has issued the passport or other official identity document shall be considered to be the country of residence.

Article 124³

Definition of paying agent

(1) For the purposes of this Chapter, "paying agent" means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or by the beneficial owner with paying the interest or securing the payment of interest.

(2) Any entity established in a member state to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered to be a paying agent when the payment is made or when such payment is secured. This provision shall not apply if the economic operator has reason to believe, on the basis of the official evidence produced by that entity, that:

- a) it is a legal person, except those legal persons referred to in paragraph (5); or
- b) its profits are taxed under the general arrangements for business taxation; or

c) it is an undertaking for collective investment in transferable securities recognized under the Council Directive no. 85/611/EEC.

An economic operator paying interest to, or securing interest for, such an entity established in another member state, which is considered a paying agent under this paragraph, shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of the member state where it is established, which shall pass this information on to the competent authority of the member state where the entity is established.

(3) The entity referred to in paragraph (2) shall, however, have the option of being treated for the purposes of this Chapter as an undertaking for collective investment in transferable securities as referred to in paragraph (2), letter c). The exercise of this option shall require the issuance of a certificate by the member state in which the entity is established and the submission of that certificate to the economic operator by the entity. Romania shall lay down a secondary legislation regarding this option, which can be exercised by the entities established on its territory.

(4) Where the economic operator and the entity referred to in paragraph (2) are established in Romania, Romania shall take the necessary measures to ensure that the entity complies with the provisions of this Chapter when it acts as a paying agent.

(5) The legal persons exempted from the provisions of paragraph (2), letter a) are:

a) in Finland: avoinyhtio (y) and kommandiittiyhtio (ky)/oppet bolag and kommanditbolag;

b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 124⁴

Definition of competent authority

For the purposes of this Chapter, "competent authority" means:

a) for Romania - the National Agency for Fiscal Administration;

b) for third countries - the competent authority for the purposes of bilateral or multilateral conventions for the avoidance of double taxation or, failing that, such other authority as is competent to issue certificates of tax residence.

Article 124⁵

Definition of interest payment

(1) For the purposes of this Chapter, "interest payment" means:

a) interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;

b) interest accrued or capitalized at the sale, refund or redemption of the debt claims referred to in letter a);

c) income derived from interest payments either directly or through an entity referred to in Article 124³, paragraph (2), distributed by:

- an undertaking for collective investment in transferable securities authorized in accordance with the Council Directive no. 85/611/EEC;

- entities which qualify for the option under Article 124³, paragraph (3);

- undertakings for collective investment established outside the territory referred to in Article 124⁶;

d) income derived from the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in letter a), provided that such income corresponds to the gains derived directly or indirectly from the interest payment defined under letters a) and b). The undertakings and entities referred to are the following:

- an undertaking for collective investment in transferable securities authorized in accordance with the Council Directive no. 85/611/EEC;

- entities which qualify for the option under Article 124³, paragraph (3);

- undertakings for collective investment established outside the territory referred to in Article 124⁶.

(2) As regards paragraph (1), letters c) and d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1), letter d), when a paying agent has no information concerning the percentage of the assets invested in debt claims, shares or units, that percentage shall be considered to be above 40%. Where the amount of the income derived by the beneficial owner cannot be determined, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1), is paid to or credited to an account held by an entity referred to in Article 124³, paragraph (2) that has not qualified for the option under Article 124³, paragraph (3), it shall be considered an interest payment by such entity.

(5) As regards paragraph (1), letters b) and d), Romania requires that paying agents established on its territory annualize the interest over a period of time that may not exceed one year and treat such annualized interest as interest payments, even if no sale, redemption or refund occurs during that period.

(6) Notwithstanding the provisions of paragraph (1), letters c) and d), Romania shall exclude from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1), letter a) of such undertakings or entities has not exceeded 15% of their assets. Likewise, notwithstanding the provisions of paragraph (4), Romania shall exclude from the definition of interest payment referred to in paragraph (1) interest paid or credited to an account of an entity referred to in Article 124³, paragraph (2) that has not qualified for the option under Article 124³, paragraph (3) and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph (1), letter a) has not exceeded 15% of its assets. The exercise of such option by Romania shall be binding on the other member states.

(7) As of 1 January 2011, the percentage referred to in paragraph (1), letter d) and in paragraph (3) shall be 25%.

(8) The percentages referred to in paragraph (1), letter d) and in paragraph (6) shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 124⁶

Territorial scope

The provisions of this Chapter shall apply to interest paid by a paying agent established within the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof.

Article 124⁷

Information reported by the paying agent

(1) Where the beneficial owner is resident of a member state, other than Romania where the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of Romania shall consist of:

- a) the identity and residence of the beneficial owner determined in accordance with Article 124²;
- b) the name and address of the paying agent;
- c) the account number of the beneficial owner or, where there is none, the identification of the debt claim giving rise to the interest;
- d) information concerning the interest payment, in accordance with paragraph (2).

(2) The minimum amount of information concerning the interest payment that has to be reported by the paying agent shall distinguish between the following categories of interest and shall indicate:

- a) in the case of an interest payment within the meaning of Article 124⁵, paragraph (1), letter a): the amount of interest paid or credited;
- b) in the case of an interest payment within the meaning of Article 124⁵, paragraph (1), letters b) and d): either the amount of the interest or income referred to in that paragraph or the full amount of the proceeds from the sale, redemption or refund;
- c) in the case of an interest payment within the meaning of Article 124⁵, paragraph (1), letter c): either the amount of the income referred to in that paragraph or the full amount of the distribution;
- d) in the case of an interest payment within the meaning of Article 124⁵, paragraph (4): the amount of the interest attributable to each member of the entity referred to in Article 124³, paragraph (2) who meets the conditions of Article 124¹, paragraph (1);
- e) in the case of an interest payment within the meaning of Article 124⁵, paragraph (5): the amount of the annualized interest.

(3) Romania shall restrict the information concerning interest payment to be reported by the paying agent to the total amount of the interest or income and to the total amount of the proceeds from sale, redemption or refund.

Article 124⁸

Automatic exchange of information

(1) The competent authority of Romania shall communicate to the competent authority of the member state where the beneficial owner is resident the information referred to in Article 124⁷.

(2) The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the fiscal year, for all interest payments made during that fiscal year.

(3) The provisions of this Chapter shall be supplemented by those of Chapter V of the present Title, except for the provisions of Article 124³⁵.

Article 124⁹

Transitional period for three member states

(1) During a transitional period starting on the date referred to in paragraphs (2) and (3), Belgium, Luxembourg and Austria shall not be required to apply the provisions regarding the automatic exchange of information on savings income. They shall, however, receive information from the other member states. During the transitional period, the aim of this Chapter shall be to ensure a minimum effective taxation of the savings income in the form of interest payments made in one member state to beneficial owners who are individuals resident for tax purposes in another member state.

(2) The transitional period shall terminate at the end of the first full fiscal year following the later of the following dates:

a) the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD model agreement on exchange of information on tax matters released on 18 April 2002 (hereinafter referred to as the "OECD Model Agreement") with respect to interest payments, as defined in this Chapter, made by paying agents established within the territory of those countries to beneficial owners resident on the territory to which this Chapter applies, in addition to the simultaneous application by those countries of a withholding tax at the rate defined for the corresponding periods referred to in Article 124¹⁰;

b) the date on which the Council agrees by unanimity that the United States of America is committed to exchange information upon request as defined in the OECD Model Agreement with respect to interest payments made by paying agents established within its territory to beneficial owners resident on the territory to which the provisions regarding the automatic exchange of information on savings income apply.

(3) At the end of the transitional period, Belgium, Luxembourg and Austria shall be required to apply the provisions regarding the automatic exchange of information on savings income as referred to in Articles 124⁷ and 124⁸ and shall cease to apply the withholding tax and the revenue sharing provided for in Articles 124¹⁰ and 124¹¹. If, during the transitional period, Belgium, Luxembourg or Austria elects to apply the provisions regarding the automatic exchange of information on savings income as referred to in Articles 124⁷ and 124⁸, then the withholding tax and the revenue sharing provided for in Articles 124¹⁰ and 124¹¹ shall no longer apply.

Article 124¹⁰

Withholding tax

(1) During the transitional period referred to in Article 124⁹, where the beneficial owner of the interest is resident of a member state other than that in which the paying agent is established, Belgium, Luxembourg and Austria shall levy a withholding tax at a rate of 15% during the first 3 years of the transitional period (1 July 2005 - 30 June

2008), 20% for the subsequent 3 years (1 July 2008 - 30 June 2011) and 35% for the coming years (starting with 1 July 2011).

(2) The paying agent shall levy the withholding tax as follows:

a) in the case of an interest payment within the meaning of Article 124⁵, paragraph (1), letter a): on the amount of the interest paid or credited;

b) in the case of an interest payment within the meaning of Article 124⁵, paragraph (1), letter b) or d): on the amount of the interest or income referred to in those letters or by levying of an equivalent effect to be borne by the recipient on the total amount of the proceeds from sale, redemption or refund;

c) in the case of an interest payment within the meaning of Article 124⁵, paragraph (1), letter c): on the amount of the income referred to in that paragraph;

d) in the case of an interest payment within the meaning of Article 124⁵, paragraph (4): on the amount of the interest attributable to each member of the entity referred to in Article 124³, paragraph (2) who meets the conditions of Article 124¹, paragraph (1);

e) where a member state exercises the option referred to in Article 124⁵, paragraph (5): on the amount of the annualized interest.

(3) For the purposes of applying the provisions of paragraph (2), letters a) and b), withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of the information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence, unless he provides evidence of the date of acquisition.

(4) The levying of a withholding tax by the member state of the paying agent shall not preclude the member state where the beneficial owner is resident for tax purposes from taxing the income in accordance with its national law, subject to compliance with the Treaty establishing the European Community.

(5) During the transitional period, member states levying a withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 124³, paragraph (2), letter c) established in another member state shall be considered as the paying agent instead of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of Article 124³, paragraph (2).

Article 124¹¹

Revenue sharing

(1) Member states levying a withholding tax in accordance with Article 124¹⁰, paragraph (1) shall retain 25% of the revenue and shall transfer 75% of the revenue to the member state where the beneficial owner of the interest is resident.

(2) Member states levying a withholding tax in accordance with Article 124¹⁰, paragraph (5) shall retain 25% of the revenue and shall transfer 75% of the revenue to the other member states proportionate to the transfers carried on as a result of applying the provisions of paragraph (1).

(3) Such transfers shall take place at the latest within a period of 6 months following the end of the fiscal year of the member state of the paying agent in the case of paragraph (1), or that of the member state of the economic operator in the case of paragraph (2).

Article 124¹²

Exceptions to the withholding tax procedure

(1) Member states levying a withholding tax in accordance with Article 124¹⁰ shall provide for one or both of the following procedures in order to ensure that the beneficial owner may request that no tax be withheld:

a) a procedure which allows the beneficial owner to expressly authorize the paying agent to report the information in accordance with Articles 124⁷ and 124⁸. Such authorization shall cover all the interest paid to the beneficial owner by that paying agent. In such cases, the provisions of Article 124⁸ shall apply;

b) a procedure which ensures that the withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate issued on his behalf by the competent authority of the state where he is a resident for tax purposes in accordance with the provisions of paragraph (2).

(2) At the request of the beneficial owner, the competent authority of the member state where he is a resident for tax purposes shall issue a certificate indicating:

a) the name, address and tax identification number or other number or, failing such, the date and place of birth of the beneficial owner;

b) the name and address of the paying agent;

c) the account number of the beneficial owner or, where there is none, the identification of the security.

(3) Such certificate shall be valid for a period not exceeding 3 years. The certificate shall be issued to any beneficial owner who requests it, within 2 months following such request.

Article 124¹³

Measures taken by Romania to carry out the exchange of information with the states that undergo a transitional period for the taxation of interest savings

The procedure for applying this Chapter for those 3 states that undergo a transitional period for the implementation of the provisions of this Chapter shall be established by a governmental decision developed jointly by the Ministry of Public Finance and the National Agency for Fiscal Administration, with an advisory opinion from the Ministry of European Integration and the Ministry of Foreign Affairs.

Article 124¹⁴

Elimination of double taxation

(1) Romania shall ensure for its resident beneficial owners the elimination of any double taxation that might result from the levying of a withholding tax in the countries undergoing a transitional period referred to in Article 124⁹, in accordance with the provisions of paragraph (2).

(2) Romania shall refund to the beneficial owner who is a resident of Romania the withholding tax referred to in Article 124¹⁰.

Article 124¹⁵

Negotiable debt securities

(1) During the transitional period referred to in Article 124⁹, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt

securities that have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of the Council Directive no. 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, or by the competent authorities of third countries shall not be considered as debt claims within the meaning of Article 124⁵, paragraph (1), letter a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period continue beyond 31 December 2010, the provisions of this paragraph shall only continue to apply in respect of negotiable debt securities:

- a) which contain gross-up and early redemption clauses; and
- b) where the paying agent as defined in Article 124³, paragraphs (1) and (2) is established in one of the three member states applying the withholding tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner who is a resident of Romania.

If a further issue is made on or after 1 March 2002 of an afore-mentioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognized by an international treaty within the meaning of Article 124¹⁶, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 124⁵, paragraph (1), letter a).

(2) The provisions of paragraph (1) shall not prevent Romania from taxing the income derived from the negotiable debt securities referred to in paragraph (1) in accordance with its national tax legislation.

Article 124¹⁶

Annex on the list of related entities referred to in Article 124¹⁵

For the purposes of Article 124¹⁵, the following entities will be considered to be entities acting as a public authority or whose role is recognized by an international treaty:

1. entities within the European Union:

Belgium

- Vlaams Gewest (Flemish Region);
- Région wallonne (Walloon Region);
- Région bruxelloise/Brussels Gewest (Brussels Region);
- Communauté française (French Community);
- Vlaamse Gemeenschap (Flemish Community);
- Deutschsprachige Gemeinschaft (German-speaking Community);

Bulgaria

- Obshtinite (municipalities);

Spain

- Xunta de Galicia (Regional Executive of Galicia);
- Junta de Andalucía (Regional Executive of Andalusia);
- Junta de Extremadura (Regional Executive of Extremadura);
- Junta de Castilla - La Mancha (Regional Executive of Castilla - La Mancha);
- Junta de Castilla - León (Regional Executive of Castilla - León);
- Gobierno Foral de Navarra (Regional Government of Navarra);
- Govern de les Illes Balears (Government of the Balearic Islands);

- Generalitat de Catalunya (Autonomous Government of Catalonia);
- Generalitat de Valencia (Autonomous Government of Valencia);
- Diputación General de Aragón (Regional Council of Aragon);
- Gobierno de las Islas Canarias (Government of the Canary Islands);
- Gobierno de Murcia (Government of Murcia);
- Gobierno de Madrid (Government of Madrid);
- Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country);
- Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa);
- Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya);
- Diputación Foral de Alava (Regional Council of Alava);
- Ayuntamiento de Madrid (City Council of Madrid);
- Ayuntamiento de Barcelona (City Council of Barcelona);
- Cabildo Insular de Gran Canaria (Island Council of Gran Canaria);
- Cabildo Insular de Tenerife (Island Council of Tenerife);
- Instituto de Crédito Oficial (Public Credit Institution);
- Instituto Catalán de Finanzas (Finance Institution of Catalonia);
- Instituto Valenciano de Finanzas (Finance Institution of Valencia);

Greece

- Organismos Tegepikoinonion Ellados (National Telecommunications Organization);
- Organismos Siderodromon Ellados (National Railways Organization);
- Demosia Epikirese Elektrismou (Public Electricity Company);

France

- La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund);
- L'Agence française de développement (AFD) (French Development Agency);
- Réseau Ferré de France (RFF) (French Rail Network);
- Caisse Nationale des Autoroutes (CNA) (National Motorways Fund);
- Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance);
- Charbonnages de France (CDF) (French Coal Board);
- Entreprise minière et chimique (EMC) (Mining and Chemicals Company);

Italy

- Regions;
- Provinces;
- Municipalities;
- Cassa Depositi e Prestiti (Deposits and Loans Fund);

Latvia

- Pašvaldības (local governments);

Poland

- gminy (communes);
- powiaty (districts);
- województwa (provinces);
- związki gmin (associations of communes);
- powiatów (associations of districts);
- województw (associations of provinces);
- miasto stołeczne Warszawa (capital city of Warsaw);
- Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernization of Agriculture);
- Agencja Nieruchomości Rolnych (Agricultural Property Agency);

Portugal

- Região Autónoma da Madeira (Autonomous Region of Madeira);
- Região Autónoma dos Açores (Autonomous Region of Azores);
- Municipalities;

Romania

- autoritățile administrației publice locale (local public administration authorities);

Slovakia

- mestá a obce (municipalities);
- Železnice Slovenskej republiky (Slovak Railway Company);
- Štátny fond cestného hospodárstva (State Road Management Fund);
- Slovenské elektrárne (Slovak Power Plants);
- Vodohospodárska výstavba (Water Economy Building Company).

2. international entities;

- European Bank for Reconstruction and Development;
- European Investment Bank;
- Asian Development Bank;
- African Development Bank;
- World Bank/International Bank for Reconstruction and Development/ International Monetary Fund;
- International Finance Corporation;
- Inter-American Development Bank;
- Social Development Fund of the Council of Europe;
- Euratom;
- European Community;
- Corporación Andina de Fomento (CAF) (Andean Development Corporation);
- Eurofima;
- European Coal and Steel Community;
- Nordic Investment Bank;
- Caribbean Development Bank.

The provisions of Article 124¹⁵ are without prejudice to any international obligations that Romania may have entered into with respect to the above-mentioned international entities.

3. entities in third countries:

- those entities that meet the following criteria:
 - a) the entity is clearly considered to be a public entity according to the national criteria;
 - b) such public entity is a producer outside the Community, which administers and finances a group of activities, principally providing goods and services outside the Community, intended for the benefit of the Community and which are effectively controlled by the central government;
 - c) such public entity is a large and regular issuer of debt;
 - d) the state concerned is able to guarantee that such public entity will not exercise an early redemption in the event of gross-up clauses.

Article 124¹⁷

Date of application

The provisions of this Chapter, which transposes the Council Directive no. 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, as subsequently amended, shall apply starting with the date Romania joins the European Union.

CHAPTER IV

Interest and royalty payments made between associated companies

Article 124¹⁸

Scope and procedure

(1) Interest or royalty payments arising in Romania shall be exempt from any taxes imposed on those payments in Romania, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another member state or a permanent establishment situated in another member state of a company of a member state.

(2) A payment made by a company that is a resident of Romania or by a permanent establishment situated in Romania shall be deemed to arise in Romania, hereinafter referred to as the "source state".

(3) A permanent establishment shall be treated as the payer of the interest or royalties only insofar as those payments represent a tax-deductible expense for the permanent establishment in Romania.

(4) A company of a member state shall be treated as the beneficial owner of the interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorized signatory, for some other person.

(5) A permanent establishment shall be treated as the beneficial owner of the interest or royalties:

a) if the debt-claim or the right to use the information in respect of which interest or royalty payments arise is effectively connected with that permanent establishment; and

b) if the interest or royalty payments represent income in respect of which that permanent establishment is subject in the member state in which it is situated to one of the taxes mentioned in Article 124²⁰, letter a), section (iii) or in the case of Belgium to the "impôt des non-résidents/belasting der niet-verblijfhouders" or in the case of Spain to the "impuesto sobre la renta de no residentes" or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Chapter in addition to, or in place of, those existing taxes.

(6) Where a permanent establishment of a company of a member state is treated as the payer, or as the beneficial owner, of the interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for the purposes of this Article.

(7) This Article shall apply only if the company which is the payer, or the company whose permanent establishment is treated as the payer, of interest or royalties is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of that interest or those royalties.

(8) The provisions of this Article shall not apply where the interest or royalties are paid by or to a permanent establishment situated in a third state of a company of a member state and the business of the company is wholly or partly carried on through that permanent establishment.

(9) The provisions of this Article shall not prevent Romania from taking into account, when determining the profit tax and applying its tax legislation, interest or royalties received by its resident companies, by permanent establishments of its resident companies or by permanent establishments situated in Romania.

(10) The provisions of this Chapter shall not apply to a company of another member state or to a permanent establishment of a company of another Member State in circumstances where the conditions set out in Article 124²⁰, letter b) have not been maintained for an uninterrupted period of at least 2 years.

(11) The fulfillment of the requirements laid down in this Article and in Article 124²⁰ shall be substantiated at the time of payment of the interest or royalties by an attestation. If fulfillment of the requirements laid down in this Article has not been attested at the time of payment, the tax shall be withheld at source.

(12) *** Repealed

(13) For the purposes of paragraph (11), the attestation to be given shall, in respect of each contract for the payment, be valid for at least one year from the date that attestation was issued and shall contain the following information:

a) proof of residence for tax purposes for the company receiving interest or royalties from Romania and, where necessary, the existence of a permanent establishment certified by the tax authority of the member state in which the company receiving interest or royalties is resident for tax purposes or in which the permanent establishment is situated;

b) beneficial ownership of the interest or royalties for the company receiving such payments in accordance with the provisions of paragraph (4) or the existence of conditions in accordance with the provisions of paragraph (5) where a permanent establishment is the recipient of the payment;

c) fulfillment of the requirements in accordance with Article 124²⁰, letter a), section (iii) in the case of the receiving company;

d) a minimum holding in accordance with Article 124²⁰, letter b);

e) the period for which the holding referred to in letter d) has existed.

It may also be requested a legal justification for the payments under the contract. For instance, the loan agreement or licensing contract may be requested.

(14) If the requirements for exemption cease to be fulfilled, the receiving company or the permanent establishment shall immediately inform the paying company or the paying permanent establishment.

(15) If that paying company or permanent establishment has withheld tax at source on the income to be tax exempted in accordance with this Article, a claim may be made for the repayment of that tax withheld at source. In this respect, the information specified in paragraph (13) shall be required. The application for the repayment of the tax must be submitted within the statutory period of limitation.

(16) The excess tax withheld at source shall be repaid within one year following due receipt of the application for the repayment of the tax and of the supporting information as it may reasonably ask for. If the tax withheld at source has not been refunded within that period, the receiving company or the permanent establishment shall be entitled, upon expiry of the year in question, to interest on the amount representing the tax that has to be refunded. The requested interest shall be calculated in accordance with the provisions of the Fiscal Procedure Code.

Article 124¹⁹

Definition of interest and royalties

For the purposes of this Chapter:

a) the term "interest" means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from securities, bonds or debentures, including

premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest;

b) the term "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalties.

Article 124²⁰

Definition of company, associated company and permanent establishment

For the purposes of this Chapter:

a) the term "company of a member state" means any company:

(i) taking one of the forms listed in Article 124²⁶; and

(ii) which in accordance with the tax legislation of a member state is considered to be a resident of that member state and is not, within the meaning of a convention for the avoidance of double taxation on income and on capital concluded with a third state, considered to be a resident for tax purposes outside the European Community; and

(iii) which is subject to one of the following taxes without being tax exempted, or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Chapter in addition to, or in place of, the existing taxes:

- impôt des sociétés/vennootschapsbelasting in Belgium;
- selskabsskat in Denmark;
- Körperschaftsteuer in Germany;
- phdros eisodematos uomikou prosopon in Greece;
- impuesto sobre sociedades in Spain;
- impôt sur les sociétés in France;
- corporation tax in Ireland;
- imposta sul reddito delle persone giuridiche in Italy;
- impôt sur le revenu des collectivités in Luxemburg;
- vennootschapsbelasting in the Netherlands;
- Körperschaftsteuer in Austria;
- imposto sobre o rendimento da pessoas colectivas in Portugal;
- yhteisöjen tulovero/inkomstskatten för samfund in Finland;
- statlig inkomstskatt in Sweden;
- corporation tax in the United Kingdom;
- Daň z příjmů právnických osob in the Czech Republic;
- Tulumaks in Estonia;
- phdros eisodematos in Cyprus;
- Uzņēmumu ienākuma nodoklis in Latvia;
- Pelno mokestis in Lithuania;
- Társasági adó in Hungary;
- Taxxa fuq l-income in Malta;
- Podatek dochodowy od osób prawnych in Poland;
- Davek od dobička pravnih oseb in Slovenia;
- Daň z príjmov právnických osôb in Slovakia;
- impozitul pe profit in Romania;
- korporativen danak in Bulgaria;

b) a company is an "associated company" of another company if, at least:

- (i) the first company has a direct minimum holding of 25% in the capital of the second company; or
- (ii) the second company has a direct minimum holding of 25% in the capital of the first company; or
- (iii) a third company has a direct minimum holding of 25% both in the capital of the first company and in the capital of the second company.

The holdings in the capital must involve only companies that are resident on the territory of the European Community;

c) the term "permanent establishment" means a fixed place of business situated in a member state through which the business of a company that is a resident of another member state is wholly or partly carried on.

Article 124²¹

Exclusion of payments as interest or royalties

(1) The benefits of this Chapter shall not be granted in the following cases:

- a) where payments are treated as a distribution of profits or as a repayment of capital under the Romanian legislation;
- b) for payments from debt-claims which carry a right to participate in the debtor's profits;
- c) for payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor's profits;
- d) for payments from debt-claims which contain no provision for repayment of the principal amount or where the repayment is due more than 50 years after the date of issue.

(2) Where, by reason of a special relationship between the debtor and the beneficial owner of interest or royalties, or between one of them and some other person, the amount of the interest or royalties exceeds the amount which would have been agreed by the debtor and the beneficial owner in the absence of such a relationship, the provisions of this Chapter shall apply only to the latter amount, if any.

Article 124²²

Fraud and abuse

(1) The provisions of this Chapter shall not preclude the application of the domestic provisions or of the provisions based on agreements to which Romania is a party, required for the prevention of fraud or abuse.

(2) Romania may, in the case of transactions for which the principal motive or one of the principal motives is fraud, tax evasion or abuse, withdraw the benefits established in this Chapter or refuse its application.

Article 124²³

Transitional rules for the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal and Slovakia

(1) Greece, Latvia, Poland and Portugal shall be authorized not to apply the provisions on tax exemption for interest and royalty payments made between associated companies until 1 July 2005 and during a transitional period of 8 years starting with 1 July 2005 the tax rate applied in these countries on interest or royalty payments made to an associated company that is a resident of another member

state or to a permanent establishment situated in another member state of an associated company of a member state must not exceed 10% during the first 4 years and 5% during the next 4 years.

Lithuania shall be authorized not to apply the provisions on tax exemption for interest and royalty payments made between associated companies until 1 July 2005. During a transitional period of 6 years starting with 1 July 2005 the tax rate applied in this country on royalty payments made to an associated company that is a resident of another member state or to a permanent establishment situated in another member state of an associated company of a member state must not exceed 10%. During the first 4 years of the six-year transitional period, the tax rate applied on interest payments made to an associated company of another member state or to a permanent establishment situated in another member state of an associated company of a member state must not exceed 10%; for the next 2 years the tax rate applied on such interest payments must not exceed 5%.

Spain and the Czech Republic shall be authorized, for royalty payments only, not to apply the provisions on tax exemption for royalty payments made between associated companies until 1 July 2005. During a transitional period of 6 years starting with 1 July 2005 the tax rate applied in these countries on royalty payments made to an associated company of another member state or to a permanent establishment situated in another member state of an associated company of a member state must not exceed 10%. Slovakia shall be authorized, for royalty payments only, not to apply the provisions on tax exemption during a transitional period of 2 years starting with 1 May 2004.

However, these transitional rules shall remain subject to the continued application of any tax rate, which is lower than those referred to above, provided by bilateral agreements concluded between the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia and other member states.

(2) Where a company that is a resident of Romania, or a permanent establishment situated in Romania of a company of a member state:

- a) receives interest or royalties from an associated company of Greece, Latvia, Lithuania, Poland or Portugal,
- b) receives royalties from an associated company of the Czech Republic, Spain or Slovakia,
- c) receives interest or royalties from a permanent establishment situated in Greece, Latvia, Lithuania, Poland or Portugal of an associated company of a member state, or
- d) receives royalties from a permanent establishment situated in the Czech Republic, Spain or Slovakia of an associated company of a member state,

Romania shall allow when determining the profit tax an amount equal to the tax paid in the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia in accordance with paragraph (1) on that income. The amount is allowed as a deduction from the tax on the profit of the company or permanent establishment that has received that income.

(3) The deduction provided for in paragraph (2) shall not exceed the lower of:

- a) the tax payable in the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia on such income on the basis of paragraph (1); or
- b) that part of the tax on the profit of the company or permanent establishment that has received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the Romanian national legislation.

Article 124²⁴
Delimitation clause

The provisions of this Chapter shall not affect the application of the domestic provisions or of the provisions based on agreements to which Romania is a party, which are designed to eliminate or avoid the double taxation of interest and royalties.

Article 124²⁵
Measures taken by Romania

The procedure for applying this Chapter shall be established by a governmental decision developed jointly by the Ministry of Public Finance and the National Agency for Fiscal Administration, with an advisory opinion from the Ministry of European Integration and the Ministry of Foreign Affairs.

Article 124²⁶
List of companies covered by the provisions of Article 124²⁰, letter a), section (iii)

The companies covered by the provisions of Article 124²⁰, letter a), section (iii) shall be the following:

- a) companies under Belgian law known as: "naamloze vennootschap/société anonyme, commanditaire vennootschap op aandelen/société en commandite par actions, besloten vennootschap met beperkte aansprakelijkheid/société privée à responsabilité limitée" and those public law bodies that operate under private law;
- b) companies under Danish law known as: "aktieselskab" and "anpartsselskab";
- c) companies under German law known as: "Aktiengesellschaft, Kommanditgesellschaft auf Aktien, Gesellschaft mit beschränkter Haftung" and "bergrechtliche Gewerkschaft";
- d) companies under Greek law known as: "anonume etairia";
- e) companies under Spanish law known as: "sociedad anónima, sociedad comanditaria por acciones, sociedad de responsabilidad limitada" and those public law bodies which operate under private law;
- f) companies under French law known as: "société anonyme, société en commandite par actions, société à responsabilité limitée" and industrial and commercial public establishments and undertakings;
- g) companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;
- h) companies under Italian law known as: "società per azioni, società in accomandita per azioni, società a responsabilità limitata" and public and private entities carrying on industrial and commercial activities;
- i) companies under Luxembourg law known as: "société anonyme, société en commandite par actions and société à responsabilité limitée";
- j) companies under Dutch law known as: "noomloze vennootschap" and "besloten vennootschap met beperkte aansprakelijkheid";
- k) companies under Austrian law known as: "Aktiengesellschaft" and "Gesellschaft mit beschränkter Haftung";

- l) commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law;
- m) companies under Finnish law known as: "osakeyhtiö/aktiebolag, osuuskunta/andelslag, säästöpankki/sparbank" and "vakuutusyhtiö/försäkringsbolag";
- n) companies under Swedish law known as: "aktiebolag" and "försäkringsaktiebolag";
- o) companies incorporated under the law of the United Kingdom;
- p) companies under Czech law known as: "akciová společnost", "společnost s ručením omezeným", "veřejná obchodní společnost", "komanditní společnost", "družstvo";
- q) companies under Estonian law known as: "täisühing", "usaldusühing", "osaühing", "aktsiaselts", "tulundusühistu";
- r) companies under Cypriot law known as: companies in accordance with the Company's Law, public corporate bodies as well as any other body which is considered as a company in accordance with the income tax laws;
- s) companies under Latvian law known as: "akciju sabiedrība", "sabiedrība ar ierobežotu atbildību";
- ş) companies incorporated under Lithuanian law;
- t) companies under Hungarian law known as: "közkereseti társaság", "betéti társaság", "közös vállalat", "korlátolt felelősségű társaság", "résztvénytársaság", "egyesülés", "közhasznú társaság", "szövetkezet";
- †) companies under Maltese law known as: "Kumpaniji ta' Responsabilita' Limitata", "Soċjetajiet in akkomandita li l-kapital tagħhom maqsum f'azzjonijiet";
- u) companies under Polish law known as: "spółka akcyjna", "spółka z ograniczoną odpowiedzialnością";
- v) companies under Slovenian law known as: "delniška družba", "komanditna delniška družba", "komanditna družba", "družba z omejeno odgovornostjo", "družba z neomejeno odgovornostjo";
- w) companies under Slovak law known as: "akciová spoločnosť", "spoločnosť s ručením obmedzeným", "komanditná spoločnosť", "verejná obchodná spoločnosť", "družstvo";
- x) companies under Romanian law known as: "societăți în nume colectiv", "societăți în comandită simplă", "societăți pe acțiuni", "societăți în comandită pe acțiuni", "societăți cu răspundere limitată";
- y) companies under Bulgarian law known as: "aktsionernoto druzhestvo", "komanditното druzhestvo s aktsii", "druzhestvoto s ogranichena otgovornost".

Article 124²⁷

Date of application

The provisions of this Chapter, which transposes the Council Directive no. 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member states, as subsequently amended, shall apply starting with 1 January 2011.

CHAPTER V

Exchange of information in the field of direct taxation

Article 124²⁸

General provisions

(1) In accordance with the provisions of this Chapter, the competent authorities of the member states shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital, and any information relating to the assessment of taxes on insurance premiums referred to in Article 3, paragraph 6 of the Council Directive no. 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as subsequently amended.

(2) There shall be regarded as taxes on income and on capital, irrespective of the manner in which they are levied, all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the disposal of movable or immovable property, taxes on the amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The taxes referred to in paragraph (2) are at present, in particular:

a) in Belgium:

- Impôt des personnes physiques—Personenbelasting;
- Impôt des sociétés—Vennootschapsbelasting;
- Impôt des personnes morales—Rechtspersonenbelasting;
- Impôt des non-résidents—Belasting der niet-verblijfhouders;

b) in Denmark:

- Indkomstskat til staten;
- Selskabsskat;
- Den kommunale indkomstskat;
- Den amtskommunale indkomstskat;
- Folkepensionsbidragene;
- Sømandsskat;
- Den særlige indkomstskat;
- Kirkeskat;
- Formueskat til staten;
- Bidrag til dagpengefonden;

c) in Germany:

- Einkommensteuer;
- Körperschaftsteuer;
- Vermögensteuer;
- Gewerbesteuer;
- Grundsteuer;

d) in Greece:

- Phdros eisodematos fndikon prosopon;
- Phdros eisodematos uomikou prosopon;
- Phdros akiuetou periousias;

e) in Spain:

- Impuesto sobre la Renta de las Personas Físicas;
- Impuesto sobre Sociedades;
- Impuesto Extraordinario sobre el Patrimonio de las Personas Físicas;

f) in France:

- Impôt sur le revenu;
- Impôt sur les sociétés;
- Taxe professionnelle;
- Taxe foncière sur les propriétés bâties;
- Taxe foncière sur les propriétés non bâties;

g) in Ireland:

- Income tax;
- Corporation tax;
- Capital gains tax;
- Wealth tax;

h) in Italy:

- Imposta sul reddito delle persone fisiche;
- Imposta sul reddito delle persone giuridiche;
- Imposta locale sui redditi;

i) in Luxembourg:

- Impôt sur le revenu des personnes physiques;
- Impôt sur le revenu des collectivités;
- Impôt commercial communal;
- Impôt sur la fortune;
- Impôt foncier;

j) in the Netherlands:

- Inkomstenbelasting;
- Vennootschapsbelasting;
- Vermogensbelasting;

k) in Austria

- Einkommensteuer;
- Körperschaftsteuer;
- Grundsteuer;
- Bodenwertabgabe;
- Abgabe von land- und forstwirtschaftlichen Betrieben;

l) in Portugal:

- Contribuição predial;
- Imposto sobre a indústria agrícola;
- Contribuição industrial;
- Imposto de capitais;
- Imposto profissional;
- Imposto complementar;
- Imposto de mais-valias;
- Imposto sobre o rendimento do petróleo;
- Os adicionais devidos sobre os impostos precedentes;

m) in Finland:

- Valtion tuloverot—de statliga inkomstskatterna;
- Yhteisöjen tulovero—inkomstskatten för samfund;
- Kunnallisvero—kommunalskatten;
- Kirkollisvero—kyrkoskatten;
- Kansaneläkevakuutusmaksu—folkpensionsförsäkringspremien;
- Sairausvakuutusmaksu—sjukförsäkringspremien;
- Korkotulon lähdevero—källskatten på ränteinkomst;
- Rajoitetusti verovelvollisen lähdevero—källskatten för begränsat skattskyldig;
- Valtion varallisuusvero—den statliga förmögenhetsskatten;

- Kiinteistövero—fastighetsskatten;

n) in Sweden:

- Den statliga inkomstskatten;
- Sjömansskatten;
- Kupongskatten;
- Den särskilda inkomstskatten för utomlands bosatta;
- Den särskilda inkomstskatten för utomlands bosatta artister m.fl.;
- Den statliga fastighetsskatten;
- Den kommunala inkomstskatten;
- Förmögenhetsskatten;

o) in the United Kingdom:

- Income tax;
- Corporation tax;
- Capital gains tax;
- Petroleum revenue tax;
- Development land tax;

p) in the Czech Republic:

- Daně z příjmů;
- Daň z nemovitostí;
- Daň dědická, daň darovací a daň z převodu nemovitostí;
- Daň z přidané hodnoty;
- Spotřební daně;

q) in Estonia:

- Tulumaks;
- Sotsiaalmaks;
- Maamaks;

r) in Cyprus:

- Phdros eisodematos;
- Ektakte Eisfora gia ten'Amuna tes Demokratias;
- Phdros Kefalaiouskon Kerdon;
- Phdros Akinetes Idioktesias;

s) in Latvia:

- iedzīvotāju ienākuma nodoklis;
- nekustamā īpašuma nodoklis;
- uzņēmumu ienākuma nodoklis;

š) in Lithuania:

- Gyventojų pajamų mokestis;
- Pelno mokestis;
- Įmonių ir organizacijų nekilnojamojo turto mokestis;
- Žemės mokestis;
- Mokestis už valstybinius gamtos išteklius;
- Mokestis už aplinkos teršimą;
- Naftos ir dujų išteklių mokestis;
- Paveldimo turto mokestis;

t) in Hungary:

- személyi jövedelemadó;
- társasági adó;
- osztalékadó;
- általános forgalmi adó;
- jövedéki adó;

- építményadó;
- telekadó;

t) in Malta:

- Taxxa fuq l-income;

u) in Poland:

- Podatek dochodowy od osób prawnych;
- Podatek dochodowy od osób fizycznych;
- Podatek od czynności cywilnoprawnych;

v) in Slovenia:

- Dohodnina;
- Davki občanov;
- Davek od dobička pravnih oseb;
- Posebni davek na bilančno vsoto bank in hranilnic;

w) in Slovakia:

- daň z príjmov fyzických osôb;
- daň z príjmov právnických osôb;
- daň z dedičstva;
- daň z darovania;
- daň z prevodu a prechodu nehnuteľností;
- daň z nehnuteľností;
- daň z pridanej hodnoty;
- spotrebné dane.

(4) The provisions of paragraph (1) shall also apply to any identical or similar taxes imposed subsequently, whether in addition to or in place of the taxes listed in paragraph (3). The competent authorities of the member states shall inform one another of the date of entry into force of such taxes.

(5) The expression "competent authority" means:

a) in Belgium:

- the Minister of Finance or an authorized representative;

b) in Denmark:

- the Minister of Finance or an authorized representative;

c) in Germany:

- the Federal Minister of Finance or an authorized representative;

d) in Greece:

- the Ministry of Finance or an authorized representative;

e) in Spain:

- the Minister of Economy and Finance or an authorized representative;

f) in France:

- the Minister of Economy or an authorized representative;

g) in Ireland:

- The Revenue Commissioners or their authorized representative;

h) in Italy:

- the Head of the Fiscal Policy Department or his authorized representatives;

i) in Luxembourg:

- the Minister of Finance or an authorized representative;

j) in the Netherlands:

- the Minister of Finance or an authorized representative;

k) in Austria:

- the Federal Minister of Finance or an authorized representative;

l) in Portugal:

- the Minister of Finance or an authorized representative;
- m) in Finland:**
- the Minister of Finance or an authorized representative;
- n) in Sweden:**
- the Head of the Finance Department or his authorized representative;
- o) in the United Kingdom:**
- The Commissioners of Customs and Excise or an authorized representative for information required concerning taxes on insurance premiums and excise duty;
- The Commissioners of Inland Revenue or an authorized representative for all other information;
- p) in the Czech Republic:**
- the Minister of Finance or an authorized representative;
- q) in Estonia:**
- the Minister of Finance or an authorized representative;
- r) in Cyprus:**
- the Minister of Finance or an authorized representative;
- s) in Latvia:**
- the Minister of Finance or an authorized representative;
- ş) in Lithuania:**
- the Minister of Finance or an authorized representative;
- t) in Hungary:**
- the Minister of Finance or an authorized representative;
- t) in Malta:**
- the Minister in charge with the Tax Department or an authorized representative;
- u) in Poland:**
- the Minister of Finance or an authorized representative;
- v) in Slovenia:**
- the Minister of Finance or an authorized representative;
- w) in Slovakia:**
- the Minister of Finance or an authorized representative;
- x) in Romania:**
- the Minister of Public Finance or an authorized representative.

Article 124²⁹

Exchange on request

(1) The competent authority of a member state may request the competent authority of another member state to forward the information referred to in Article 124²⁸, paragraph (1) in a particular case. The competent authority of the requested state need not comply with the request of information if it appears that the competent authority of the requesting state has not exhausted its own usual sources of information, which it could have utilized, according to the circumstances, to obtain the requested information without running the risk of endangering the attainment of the sought after result.

(2) For the purpose of forwarding the information referred to in Article 124²⁸, paragraph (1), the competent authority of the requested member state shall arrange for the conduct of any inquiries necessary to obtain such information.

(3) For the purpose of obtaining the requested information, the competent authority from which the information is requested or the administrative authority to which it has

recourse shall proceed as though acting on its own account or at the request of another authority in its own member state.

Article 124³⁰

Automatic exchange of information

For categories of cases which they shall determine under the consultation procedure laid down in Article 124³⁸, the competent authorities of the member states shall regularly exchange the information referred to in Article 124²⁸, paragraph (1) without prior request.

Article 124³¹

Spontaneous exchange of information

(1) The competent authority of a member state shall without prior request forward the information referred to in Article 124²⁸, paragraph (1) of which it has knowledge, to the competent authority of any other member state concerned, in the following circumstances:

a) the competent authority of the one member state has grounds for supposing that there may be a loss of tax in the other member state;

b) a person liable to tax obtains a reduction in or an exemption from tax in the one member state which would give rise to an increase in tax or to liability to tax in the other member state;

c) business dealings between a person liable to tax in a member state and a person liable to tax in another member state are conducted through one or more countries in such a way that a saving in tax may result in one or the other member state or in both;

d) the competent authority of a member state has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

e) information forwarded to the one member state by the competent authority of the other member state has enabled information to be obtained which may be relevant in assessing liability to tax in the latter state.

(2) The competent authorities of the member states may, under the consultation procedure laid down in Article 124³⁸, extend the exchange of information provided for in paragraph (1) to cases other than those specified therein.

(3) The competent authorities of the member states may forward to each other in any other case, without prior request, the information referred to in Article 124²⁸, paragraph (1) of which they have knowledge.

Article 124³²

Time limit for forwarding information

The competent authority of a member state which, under the provisions of the present Chapter, is requested to provide information, shall send it as soon as possible. If it encounters obstacles in providing the information or if it refuses to provide the information, it shall promptly inform the requesting authority to this effect, indicating the nature of the obstacles or the reasons for its refusal.

Article 124³³

Collaboration by officials of the state concerned

For the purpose of applying the preceding provisions, the competent authority of the member state providing the information and the competent authority of the member state for which the information is provided may agree, under the consultation procedure laid down in Article 124³⁸, to authorize the presence in the first member state of officials of the tax administration of the other member state. The details for applying this provision shall be determined under the same procedure.

Article 124³⁴

Provisions relating to secrecy

(1) All information disclosed to a member state under this Chapter shall be kept secret in that state in the same manner as information received under its domestic legislation. In any case, such information:

- a) may be disclosed only to persons who are directly involved in the tax assessment or in the administrative control of that tax assessment;
- b) may be disclosed only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgments if the competent authority of the member state supplying the information raises no objection at the time when it first supplies the information;
- c) shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

In addition, the information may be used for the assessment of other levies, duties and taxes covered by Article 2 of the Council Directive no. 76/308/EEC.

(2) The provisions of paragraph (1) shall not oblige a member state whose legislation or administrative practice lays down, for tax purposes, narrower legal provisions than those contained in that paragraph, to provide information if the state concerned does not undertake to respect those narrower legal provisions.

(3) Notwithstanding the provisions of paragraph (1), the competent authorities of the member state providing the information may allow this information to be used for other purposes in the requesting state, if, under the legislation of the state providing the information, it could, in similar circumstances, be used in the state providing the information for similar purposes.

(4) Where a competent authority of a member state considers that information which it has received from the competent authority of another member state is likely to be useful to the competent authority of a third member state, it may transmit the information to the latter competent authority with the agreement of the competent authority that has provided the information.

Article 124³⁵

Limits to exchange of information

(1) This Chapter shall impose no obligation on the requested member state to conduct inquiries or to provide information if it would be contrary to its legislation or

administrative practices for that State to conduct such inquiries or to collect the requested information.

(2) The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

(3) The competent authority of a member state may decline to provide information where the requesting member state is unable, for reasons of fact or law, to provide similar information.

Article 124³⁶

Notification

(1) At the request of the competent authority of a member state, the competent authority of the other member state shall, in accordance with the legal provisions governing the notification of similar instruments in the requested member state, notify the addressee of all instruments and decisions issued by the administrative authorities of the requesting member state and which concern the application within its territory of the legislation regarding the taxes covered by this Chapter.

(2) The requests for notification shall indicate the subject of the instrument or decision to be notified and shall specify the name and address of the addressee, together with any other information which may facilitate the identification of the addressee.

(3) The requested authority shall inform the requesting authority immediately of its response to the request for notification and shall notify it, in particular, of the date of notification of the decision or instrument to the addressee.

Article 124³⁷

Simultaneous examinations

(1) Where the tax situation of one or more persons liable to tax is of common or complementary interest for two or more member states, those states may agree to conduct simultaneous examinations, within their own territory, with a view to exchange the information thus obtained, whenever such an exchange of information would appear to be more effective than the examinations conducted by one member state alone.

(2) The competent authority of each member state shall identify independently the persons liable to tax which it intends to propose for simultaneous examination. That competent authority shall notify the respective competent authorities of the other member states concerned of the cases which, in its view, should be subject to a simultaneous examination. That competent authority shall give reasons for its choice, as far as possible, by providing the information which led to its decision for a simultaneous examination. The competent authority shall specify the period of time during which such examinations should be conducted.

(3) The competent authority of each member state concerned shall decide whether it wishes to take part in the simultaneous examination. On receipt of a proposal for a simultaneous examination, the competent authority shall confirm its agreement or shall communicate its reasoned refusal to its counterpart authority.

(4) Each competent authority of the member states concerned shall appoint a representative with responsibility for supervising and coordinating the examination activity.

Article 124³⁸

Consultations

(1) For the purposes of the implementation of this Chapter, consultations shall be held, if necessary in a Committee, between:

- a) the competent authorities of the member states concerned at the request of either, in respect of bilateral questions;
- b) the competent authorities of all member states and the Commission, at the request of one of those authorities or the Commission, insofar as the matters involved are not solely of bilateral interest.

(2) The competent authorities of the member states may communicate directly with each other. The competent authorities of the member states may by mutual agreement allow to the authorities designated by them to communicate directly with each other in specified cases or in certain categories of cases.

(3) Where the competent authorities make arrangements on bilateral matters covered by this Article other than those regarding individual cases, they shall as soon as possible inform the Commission thereof. The Commission shall in turn notify the competent authorities of the other member states.

Article 124³⁹

Pooling of experience

The member states shall, together with the Commission, constantly monitor the cooperation procedure provided for in this Chapter and shall pool their experience, especially in the field of transfer pricing within groups of enterprises, with a view to improving such cooperation and, where appropriate, drawing up a body of rules in the fields concerned.

Article 124⁴⁰

Applicability of wider-ranging provisions of assistance

The foregoing provisions shall not prevent the fulfillment of any wider obligations to exchange information which might arise from other legal acts.

Article 124⁴¹

Date of application

The provisions of this Chapter, which transposes the Council Directive no. 77/799/EEC concerning mutual assistance by the competent authorities of the member states in the field of direct taxation and taxation of insurance premiums, as subsequently amended, shall apply starting with the date Romania joins the European Union.

TITLE VI
Value-added tax

CHAPTER I
Definitions

ART. 125
Definition of value-added tax

The value-added tax is an indirect tax that is owed to the state budget and collected according to the provisions of the present title.

ART. 125¹
Definition of certain terms and expressions:

(1) For purposes of the present title, the terms and expressions below have the following meanings:

1. *procurement* means the goods and services obtained or to be obtained by a taxpayer through the following operations: deliveries of goods and/or supplies of services performed or to be performed by another person to said taxpayer, intra-Community procurement and imports of goods;
2. *intra-Community procurement* for purposes of art. 130¹;
3. *fixed tangible goods* represents goods held in order to be used in the production or delivery of goods or the supply of services, in order to be leased to third parties or for administrative purposes, if such goods have a normal usage duration of more than one year and the value thereof are higher than the limit provided by Government decision or by the present title;
4. *economic activity* has the meaning provided by art. 127 par. (2). When a person carries out several economic activities, this term shall refer to all the economic activities carried out by such person;
5. *taxation base* represents the counter-value of a taxable delivery of goods or supply of services, of a taxable import or a taxable intra-Community procurement, established according to chapter VII;
6. *goods* means tangible movable and immovable goods, by their nature or by destination. Electric energy, thermal energy, natural gas, agents of refrigeration and others of this nature are considered tangible movable goods;
7. *excisable products* are mineral oils, alcohol and alcoholic beverages, as well as tobacco products, as defined under title VII in the present law, except for gas delivered through a system of natural gas located on the territory of the Community or through any network connected to such a system;
8. *VAT identification number* is the number provided by art. 154 par. (1) which is assigned by the competent authorities in Romania to the persons who are bound to register themselves according to art. 153 or 153¹, or a similar registration number assigned by the competent authorities in a Member State;
9. *accession date* is the date of Romania's accession to the European Union;
10. *value-added tax declaration* means the deduction sheet which is drawn up and submitted as per the provisions of art. 156²;
11. *Directive 112* is Directive 2006/112/EC of the Council of the European Union of November 28, 2006 on the common system of the value-added tax, published in the Official Journal of the European Communities (OJEC) no. L 347 of December 11,

2006, as subsequently amended and supplemented. The references in the invoices sent by the suppliers/providers from other Member States to the articles in Directive 6, namely Directive 77/388/EC of the Council of May 17, 1977 on the harmonization of the laws of the Member States relating to turnover taxes—common system of value-added tax: uniform basis of assessment, as published in the Official Journal of the European Communities (OJEC) no. L 145 of June 3, 1977, are to be considered references to the corresponding articles in Directive 112, as per the table of correlations in appendix XII to such directive;

12. *invoice* means the document provided by art. 155;

13. *importer* means the person in whose name the goods are declared at the time the import fee becomes chargeable, as per art. 136, and who is bound to pay the tax according to art. 151¹ for taxable imports;

14. *small enterprise* means a taxable person who applies the special exemption regime provided by art. 152 or, as applicable, an equivalent exemption regime, as per the legal provisions of the Member State where the person is established, according to art. 281 - 292 in Directive 112;

15. *intra-Community delivery* has the meaning provided by art. 128 par. (9);

16. *delivery to oneself* has the meaning provided by art. 128 par. (4);

17. *fiscal period* is the period provided by art. 156¹;

18. *taxable person* has the meaning provided by art. 127 par. (1) and is the physical person, group of persons, legal person, as well as any entity capable of carrying out an economic activity;

19. *non-taxable legal person* is the person, other than a physical person, who is not subject to taxation, as per the provisions of art. 127 par. (1);

20. *non-taxable person* is a person who does not fulfill the conditions of art. 127 par. (1) in order to be considered a taxable person;

21. *person* is a taxable person or a non-taxable legal person or a non-taxable person;

22. *ceiling for intra-Community procurement* means the ceiling established according to art. 126 par. (4) letter b);

23. *ceiling for distance sales* means the ceiling established according to art. 132 par. (2) letter a);

24. *supply to oneself* has the meaning provided by art. 129 par. (4);

25. *suspension customs regime* means, with regard to the value-added tax, the customs regimes and destinations provided by art. 144 par. (1) letter a) pct. 1 - 7;

26. *services provided by electronic means* mean: supply and conceiving of websites, remote maintenance of software and hardware, supply of software and update thereof, supply of images, texts and information and making available of databases, supply of music, movies and games, including videogames, transmission and broadcasting of shows and political, cultural, artistic, sports, scientific, entertainment events and supply of distance learning services. When the services provider and the client thereof communicate through email, this does not mean by itself that the service provided is an electronic one;

27. *tax* means the value-added tax applicable as per the present title;

28. *collected tax* means the tax corresponding to the taxable deliveries of goods and/or supplies of services performed by the taxable person, as well as the tax corresponding to the operations for which the beneficiary is bound to pay the tax, according to art. 150 - 151¹;

29. *deductible tax* means the total amount of tax owed or paid by a taxable person for the acquisitions performed;

30. *tax to deduct* means the tax corresponding to acquisitions and which can be deducted as per art. 145 par. (2) - (4);

31. *deducted tax* means the deductible tax that was actually deducted;

32. *sale at a distance* means a delivery of goods that are dispatched or transported from a Member State to another Member State by a provider or another person on account of the provider to a purchaser who is a taxable person or a non-taxable legal person and who benefits from the derogation provided by art. 126 par. (4), or by any other non-taxable person, under the conditions provided by art. 132 par. (2) - (7).

(2) For purposes of the present title:

a) a taxable person whose seat of the economic activity is in Romania is considered to be established in Romania;

b) a taxable person whose seat of the economic activity is outside Romania, is considered to be established outside Romania if it has a fixed seat in Romania or it has sufficient technical and human resources in Romania in order to perform on a regular basis taxable deliveries of goods and/or supplies of services;

c) a taxable person whose seat of the economic activity is outside Romania and who has a fixed seat in Romania according to letter b) is considered a taxable person who is not established in Romania for the deliveries of goods and supplies of services performed without the participation of the fixed seat thereof in Romania.

(3) The new means of transport referred to under art. 126 par. (3) letter b) and art. 143 par. (2) letter b) are those provided by letter a) and which fulfill the conditions under letter b), respectively:

a) means of transport are: ships with more than 7.5 m in length, aircrafts the weight of which exceeds 1,550 kg upon liftoff or land motor vehicles the capacity of which exceeds 48 cm³ or the power of which exceeds 7.2 kW, all of these dedicated to transport of passengers or goods, except for:

1. ships used for the international transport of persons and/or goods, for fishing or other economic activity, or for rescue or assistance at sea; and

2. aircrafts used mainly for paid international transport of persons and/or goods;

b) the conditions to be fulfilled are the following:

1. in the case of a land vehicle, it should not have been delivered more than 6 months before the date of putting into operation thereof or should not have travelled more than 6,000 km;

2. in the case of a ship, it should not have been delivered more than 3 months before the date of putting into operation thereof or should not have travelled for more than 100 hours in total;

3. in the case of an aircraft, it should not have been delivered more than 3 months before the date of putting into operation thereof or should not have performed flights with a total duration of more than 40 hours.

ART. 125²

Territorial scope of application

(1) For purposes of the present title:

a) Community and Community territory means the territories of the Member States, as they are defined by the present article;

b) Member State and territory of the Member State means the territory of every Member State of the Community for which the Treaty establishing the European Community applies, as per the provisions of art. 299 therein, except for the territories provided by par. (2) and (3);

- c) third territories are the territories provided by par. (2) and (3);
d) third country means any Member State or territory for which the provisions of the Treaty establishing the European Community does not apply.
- (2) The following territories which are not part of the territory of the Community for customs purposes shall be excluded from the Community territory for tax purposes:
- a) the Federative Republic of Germany:
 - 1. the Helgoland Island;
 - 2. the Büsingen territory;
 - b) the Kingdom of Spain:
 - 1. Ceuta;
 - 2. Melilla;
 - c) the Republic of Italy:
 - 1. Livigno;
 - 2. Campione d'Italia;
 - 3. the Italian waters of Lugano Lake.
- (3) The following territories part of the Community territory for customs purposes are to be excluded from the Community territory for tax purposes:
- a) the Canary Islands;
 - b) the French Republic: the foreign territories thereof;
 - c) the Athos Mountain;
 - d) the Aland Islands;
 - e) the Channel Islands.
- (4) The territories provided below are to be considered included in the territories of the following Member States:
- a) the French Republic: the Principality of Monaco;
 - b) the United Kingdom of Great Britain and Northern Ireland: the Isle of Man;
 - c) the Republic of Cyprus: the zones of Akrotiri and Dhekelia under the sovereignty of the United Kingdom of Great Britain and Northern Ireland.

CHAPTER II

Taxable operations

ART. 126

Taxable operations

- (1) From the perspective of the tax, the taxable operations in Romania shall be those that fulfill the following cumulative conditions:
- a) the operations which, for purposes of art. 128 - 130, represent or are assimilated to a delivery of goods or a supply of services subject to the tax and made for consideration;
 - b) the place of delivery of the goods or of supply of the services is deemed to be Romania, as per the provisions of art. 132 and 133;
 - c) the delivery of goods or the supplies of services is performed by a taxable person, as such is defined under art. 127 par. (1), and who acts in such capacity;
 - d) the delivery of the goods or the supply of the services should result from one of the economic activities provided by art. 127 par. (2);
- (2) The import of goods performed in Romania by any person is also a taxable operation if the place of import is in Romania according to art. 132².
- (3) The following operations made for consideration and for which the place is deemed to be Romania according to art. 132¹ are also taxable operations:

a) an intra-Community procurement of goods, others than new means of transport or excisable products, performed by a taxable person acting as such or by a non-taxable legal person who do not benefit from the derogation provided by par. (4), and which follows an intra-Community delivery performed outside Romania by a taxable person acting as such and which is not considered a small enterprise in its Member State of origin and to which the provisions of art. 132 par. (1) letter b) regarding the deliveries of goods which form the object of an installation or fitting or the provisions of art. 132 par. (2) regarding sales at a distance do not apply;

b) an intra-Community procurement of new means of transport performed by any person;

c) an intra-Community procurement of excisable products performed by a taxable person acting as such or by a non-taxable legal person.

(4) By way of derogation from the provisions of par. (3) letter a), shall not be deemed taxable operations in Romania the intra-Community procurements which fulfill the following conditions:

a) are performed by a taxable person that carries out only deliveries of goods or supplies of services for which the tax is deductible or by a non-taxable legal person;

b) the total value of such intra-Community procurements does not exceed in one current calendar year or has not exceeded in the previous calendar year the ceiling of EUR 10,000 the equivalent of which in Lei is established through norms.

(5) The ceiling for intra-Community procurements provided by par. (4) letter b) is made up of the total value, exclusive of the value-added tax, owed or paid in the Member State from which the goods are dispatched or transported, of the intra-Community procurements of goods, others than new means of transport or goods subject to excises.

(6) Taxable persons and non-taxable legal persons that are eligible for the derogation provided at par. (4) are entitled to opt for the general regime provided by par. (3) letter a). The option applies for at least two calendar years.

(7) The rules applicable in the case of exceeding the ceiling for intra-Community procurements provided at par. (4) letter b) or that of exercising the option are established through norms.

(8) The following are not considered taxable operations in Romania:

a) intra-Community procurements of goods the delivery of which in Romania would be exempt according to art. 143 par. (1) letters h) – m);

b) intra-Community procurements of goods performed within a triangular operation for which the place is in Romania according to the provisions of art. 132¹ par. (1), when the following conditions are fulfilled:

1. the procurement of goods is performed by a taxable person called reseller-purchaser who is not established in Romania but is registered for VAT in another Member State;

2. the procurement of goods is performed for the purpose of a subsequent delivery of the respective goods in Romania by the reseller-purchaser provided under point 1 above;

3. the goods thus purchased by the reseller-purchaser provided under point 1 above are dispatched or transported directly to Romania from another Member State than the one where the reseller-purchaser is registered for VAT to the person to which said reseller-purchaser is to perform the subsequent delivery, and which is called beneficiary of the subsequent delivery;

4. the beneficiary of the subsequent delivery is another taxable person or a non-taxable legal person registered for VAT in Romania;

5. the beneficiary of the subsequent delivery was appointed according to art. 150 par. (4) as a person bound to pay the tax for the delivery performed by the reseller-purchaser provided under point 1.

c) intra-Community procurements of second-hand goods, works of art, collectors' items and antiques for purposes of the provisions of art. 152², when the seller is a reseller taxable person acting as such and the goods were subject to taxation in the Member State of supply, according to the special regime for agents who are taxable persons as provided by art. 313 and 326 in Directive 112 or the seller is an organizer of public auctions acting as such and the goods were subject to taxation in the Member State of supply, according to the corresponding special regime, as provided by art. 333 in Directive 112;

d) the intra-Community procurement of goods which follows a delivery of goods under a customs suspension regime or under a procedure of internal transit, if such regime or the respective procedure are concluded on the territory of Romania for such goods.

(9) Taxable operations can be:

a) taxable operations for which the rates provided by art. 140 are to be applied;

b) operations exempt from tax with right to deduction for which the tax is owed but the deduction of the tax owed or paid for procurement is allowed. In the present title such operations are those provided by art. 143 - 144¹;

c) operations exempt from tax without right to deduction, for which the tax is not owed nor is deduction allowed for the tax owed or paid for procurement. In the present title such operations are those provided by art. 141;

d) imports and intra-Community procurements exempt from tax as per art. 142;

e) operations provided by letters a) – c) which are exempt without right of deduction and are performed by small enterprises who apply the special exemption regime provided by art. 152, for which the tax is not owed and the deduction of the tax owed or paid for procurement is not allowed.

CHAPTER III **Taxable persons**

ART. 127

Taxable persons and the economic activity

(1) It is deemed a taxable person any person who carries out, in an independent manner and irrespective of the place, economic activities like those provided under par. (2), no matter the purpose or result of such activities.

(2) For purposes of the present title, economic activities comprise the activities of producers, traders or services suppliers, including extractive activities, agricultural ones and the activities of liberal professions or those assimilated thereto. The exploitation of tangible or intangible goods in order to obtain revenues on a continuous basis is also considered an economic activity.

(2¹) The situations in which the physical persons who perform deliveries of immovable goods become taxable persons are specified in norms.

(3) The employees or any other persons related to an employer through an individual employment contract or through any other judicial means that creates a relationship of the type employer-employee with respect to working conditions, payment or other liabilities of the employer are not deemed to act in an independent manner.

(4) Public institutions are not taxable persons for the activities that are carried out in their capacity as public institutions, even if for the performance of such activities charges, fees, royalties, duties or other payments are charged, except for those activities which would cause distortions in competition if the public institutions were treated as non-taxable persons, as well as for those provided under par. (5) and (6).

(5) Public institutions are taxable persons for the activities carried out in their capacity as public institutions but which are exempt from value-added tax, as per art. 141.

(6) Public institutions are also taxable persons for the following activities:

- a) telecommunications;
- b) supply of water, gas, electricity, thermal energy, agents of refrigeration and others of the same kind;
- c) transport of goods and passengers;
- d) port and airport services;
- e) delivery of new goods manufactured for sale;
- f) the activity of commercial fairs and exhibitions;
- g) warehousing;
- h) activities of commercial publicity bodies;
- i) activities of travel agents;
- j) activities of staff shops, canteens, restaurants and similar institutions;
- k) the operations of public radio and TV stations.

(7) By way of exception from the provisions of par. (1), any person that performs on occasions an intra-Community delivery of new means of transport is to be deemed a taxable person for any such delivery.

(8) Under the conditions and within the limits provided by the norms, it shall be deemed a single fiscal group a group of taxable persons established in Romania which, while being independent from a legal perspective, are closely connected to each other from an organizational, financial and economic perspective.

(9) Any shareholder or partner of an association or organization without legal personality is deemed a separate taxable person for those economic activities which are not carried out in the name of the association or organization in question.

(10) Joint ventures do not form separate taxable persons. Consortiums or other forms of association for commercial purposes without legal personality and which are incorporated under the law are treated as joint ventures.

CHAPTER IV

Operations comprised within the scope of application of the value-added tax

ART. 128

Delivery of goods

(1) A *delivery of goods* means any transfer of the right to dispose of goods as owner.

(2) It shall be deemed that a taxable person acting on his/her own behalf but on account of another as an agent thereof in a delivery of goods has purchased and delivered the goods in question his(her)self, under the conditions established through norms.

(3) The following are also considered deliveries of goods for purposes of par. (1):

- a) the actual handing over of goods to another person within an installment sale contract or any other type of contract that provides that the ownership is transferred

at the latest at the moment when the last installment is paid, with the exception of leasing contracts;

b) the transfer of the ownership right with respect to goods further to forced execution;

c) the passing to the public domain of certain goods from the patrimony of taxable persons, under the conditions provided by the legislation referring to public property and its legal regime, in exchange for compensation.

(4) The following operations are assimilated to deliveries of goods for consideration:

a) the taking over by a taxable person of movable goods acquired or produced by such person for use for purposes that are not related to the carried out economic activity, if the tax for such goods or for the components thereof was wholly or partially deducted;

b) the taking over by a taxable person of movable goods acquired or produced by such person to be made available to other persons for free, if the tax for such goods or for the components thereof was wholly or partially deducted;

c) the taking over by a taxable person of tangible movable goods acquired or produced by such person, other than capital assets provided by art. 149 par. (1) letter a) to be used for operations which do not give the right to whole deduction, if the tax for such goods was wholly or partially deducted on the date of acquisition;

d) goods ascertained to be missing from management, except for those referred to at par. (8) letters a) – c).

(5) Any distribution of goods from the assets of a company to its associates or shareholders, including a distribution of goods in connection with a liquidation or a dissolution without liquidation of a taxable person, except for the transfer provided by par. (7), is a delivery of goods for consideration if the tax for such goods or for the components thereof was wholly or partially deducted.

(6) In the case of two or more successive transfers of the ownership right with respect to a good, each transfer is considered a separate delivery of the good even if the good is transported directly to the final beneficiary.

(7) The transfer of all the assets or part thereof performed on occasion of the transfer of assets or, as applicable, of liabilities as well, no matter if such transfer is performed as a result of a sale or of operations like division, merger or as an in-kind contribution to the capital of a company, is not a delivery of goods if the receiver of the assets is a taxable person. The receiver of the assets is deemed to be the successor of the assignor with respect to the adjustment of the right of deduction provided by law.

(8) The following are not a delivery of goods for purposes of par. (1):

a) goods destroyed as a result of natural catastrophes or other cases of force majeure, as well as goods lost or stolen and proven as such under the law, as provided by norms;

b) goods in the nature of inventory that are qualitatively damaged, that may no longer be capitalized, as well as fixed tangible assets that were annulled, under the conditions provided by norms;

c) perishables, within the limits provided by law;

d) goods granted for free from the state reserve as foreign or domestic humanitarian assistance;

e) granting goods for free for advertising purposes or to incentivize sales or, more generally, for purposes related to the performance of the economic activities, under the conditions provided by norms;

f) granting goods of small value for free within actions of sponsorship, mecenat or protocol/representation, under the conditions provided by norms.

(9) Intra-Community delivery is a delivery of goods for purposes of par. (1) which are dispatched or transported from a Member State to another member State by the provider or by the person to which they are delivered or by another person on account thereof.

(10) It is assimilated to intra-Community delivery for consideration the transfer by a taxable person of goods belonging to its economic activity in Romania to another Member State, except for non-transfers as provided by par. (12).

(11) The transfer provided under par. (10) represents the dispatch or transport of any movable tangible goods from Romania to another Member State, by a taxable person or another person on account thereof, in order to be used for purpose of carrying out its economic activity.

(12) For purposes of the present title, the non-transfer is the dispatch or transport of goods from Romania to another Member State, by a taxable person or another person on account thereof, in order to be used for the purpose of one of the following operations:

a) the delivery of the good in question performed by the taxable person to the territory of the Member State of destination of the good dispatched or transported according to art. 132 par. (5) and (6) on sale at a distance;

b) the delivery of the goods in question, performed by the taxable person to the territory of the Member State of destination of the good dispatched or transported according to art. 132 par. (1) letter b) on deliveries with installment or assembly performed by the provider or on behalf thereof;

c) the delivery of the goods in question, performed by the taxable person on board a ship, aircraft or train, during transports of passengers made on the territory of the Community, under the conditions provided by art. 132 par. (1) letter d);

d) the delivery of the goods in question, performed by the taxable person, under the conditions provided by art. 143 par. (2) with respect to exempt intra-Community deliveries, by art. 143 par. (1) letters a) and b) with respect to exemptions for export deliveries and by art. 143 par. (1) letters h), i), j), k) and m) with respect to exemptions for deliveries dedicated to ships, aircrafts, diplomatic missions and consular offices, as well as to international organizations and to NATO forces;

e) delivery of gas through a system of natural gas located on Community territory or through any other network connected through such a system, delivery of electricity, delivery of thermal energy or refrigerating agent through heating or cooling networks, according to the conditions provided by art. 132 par. (1) letters e) and f) regarding the place of delivery of such goods;

f) supply of services to the benefit of the taxable person, which involves works on the tangible goods performed in the Member State where the dispatch or transport of the good ends, provided that the goods, after processing, are dispatched back to the taxable person in Romania that had initially dispatched or transported them;

g) the temporary use of the good dispatched or transported on the territory of the Member State of destination for supply of services in the Member State of destination, by the taxable person established in Romania;

h) the temporary use of the good in question, for a term not exceeding 24 months, on the territory of another Member State, provided the import of the same good for temporary use from a third country would benefit from the customs regime of temporary admittance with whole exemption of import rights.

(13) If one of the conditions provided under par. (12) is no longer fulfilled, the dispatch or transport of the good in question is to be deemed as a transfer from

Romania to another Member State. In such case, the transfer is deemed made at the time the condition is no longer fulfilled.

(14) Any measures of simplification with respect to the enforcement of the provisions under par. (10) - (13) can be introduced through order of the minister of public finance.

ART. 129

Supply of services

(1) A *supply of services* is any operation that is not a delivery of goods, as the latter is defined under art. 128.

(2) When a taxable person acting on his/her own behalf but on account of another takes part in a supply of services, it shall be deemed that he/she received and supplied the services in question his(her)self.

(3) Supplies of services include operations such as:

a) the rental of goods or the transmission of the use of goods under a leasing contract;

b) the assignment of intangible goods, no matter if they form the object of ownership, like: the transfer and/or transmission of the use of copyrights, patents, licenses, trademarks and other similar rights;

c) the commitment not to carry out an economic activity, not to compete with another person, or to tolerate an action or a situation;

d) supplies of services performed on the basis of an order issued by/or on behalf of a public authority or as provided by law;

e) intermediation performed by commissioners that act in the name of and on account of the principal when they intervene in a delivery of goods or supply of services.

(4) The following are to be assimilated to a *supply of services for consideration*:

a) the use of goods, other than capital assets, that are part of the assets used by a taxable person in his/her economic activity for his/her own use or that of his/her personnel or to be made available for the use of other persons for free, for other purposes than the performance of its economic activity, if value-added tax for such goods was wholly or partially deducted, except for the goods the acquisition of which is subject to limitation to 50% of the right to deduction, as per the provisions of art. 145¹;

b) the supply of services performed for free by a taxable person for purposes that are not related to its economic activity, for the personal use of his/her employees or other persons.

(5) The following operations, without limitation, are not considered a supply of services for consideration for purposes of par. (4):

a) the use of goods part of the assets used for his/her economic activity by the taxable person or the supply of services for free, within actions of sponsorship, mecenat or protocol, under the conditions established through norms;

b) the services which are part of the economic activity of the taxable person and are supplied for free for advertising purposes or to incentivize sales;

c) the services supplied for free during the warranty period by the person that performed the initial delivery of goods or supply of services.

(6) *** Repealed

(7) The provisions of art. 128 par. (5) and (7) are to appropriately apply to supplies of services.

ART. 130

Exchange of goods or services

In the case of an operation that involves a delivery of goods and/or a supply of services in exchange for a delivery of goods and/or a supply of services, each taxable person is considered to have made a delivery of goods and/or a supply of services for consideration.

ART. 130¹

Intra-Community acquisitions of goods

(1) Shall be deemed an intra-Community acquisition of goods the obtaining of the right to dispose as owner of tangible movable goods the dispatch or transport of which to the destination indicated by the purchaser is made by the supplier, the purchaser or by another person on account of the supplier or purchaser, and to another Member State than the one of departure of the transport or of dispatch of the goods.

(2) The following operations are assimilated to an intra-Community acquisition for consideration:

a) the use in Romania by a taxable person for purposes of his/her own economic activity of goods transported or dispatched by such person or by another on behalf of such person from the Member State on the territory of which said goods were produced, extracted, purchased, acquired or imported by such person in order to carry out his/her own economic activity, if the transport or dispatch of the goods in question, had it been performed from Romania to another Member State, would have been treated as a transfer of goods to another Member State, as per the provisions of art. 128 par. (10) and (11);

b) the takeover by Romania's armed forces, for use thereof or for the civil personnel of the armed forces, of goods they acquired in another Member State which is part of the North Atlantic Treaty signed in Washington on April 4, 1949 and upon the acquisition of which the general taxation rules of said Member State did not apply, if the import of the goods in question could not benefit from the exemption provided by art. 142 par. (1) letter g).

(3) Shall also be considered an intra-Community acquisition for consideration of goods if the delivery thereof, had it been performed in Romania would have been treated as a delivery of goods for consideration.

(4) Shall be assimilated to an intra-Community acquisition the acquisition by a non-taxable legal person of goods imported by such person within the Community and transported or dispatched to another Member State than the one of import. The non-taxable legal person is to benefit from the return of the value-added tax paid in Romania for the import of the goods if it proves that its intra-Community acquisition was subject to tax in the Member State of destination of the goods that were dispatched or transported.

(5) Any measures of simplification with respect to the enforcement of the provisions under par. (2) letter a) can be introduced through order of the minister of public finance.

ART. 131 **Import of goods**

The import of goods is:

- a) the entry on Community territory of goods that are not under free circulation for purposes of art. 24 in the Treaty establishing the European Union;
- b) apart from the operations provided by letter a), the entry in the Community of goods which are under free circulation and originate in a third country which is part of the customs territory of the Community.

CHAPTER V **Place of taxable operations**

ART. 132 **Place of delivery of goods**

(1) The following are considered to be the place of delivery of goods:

- a) the place where the goods are located at the moment when the dispatch or transport is initiated, in the case of goods that are dispatched or transported by the supplier, the purchaser or a third. If the place of delivery established as per the present provision is outside the Community territory, the place of the delivery performed by the importer and the place of any subsequent delivery shall be deemed to be in the Member State of import of the goods and the goods shall be deemed to be transported or dispatched from the Member State of import;
- b) the place where the installation is performed, in the case of goods that are subject to installation or assembly, by the supplier or by another person on behalf of the supplier;
- c) the place where the goods are located at the moment when they are placed at the purchaser's disposal, in the case of goods that are not dispatched or transported;
- d) the place of departure of passenger transport, in the case of the delivery of goods performed on board a ship, aircraft or train, for the part of the passenger transport performed within Community territory, if:
 - 1. the part of passenger transport performed within Community territory is the part of such transport performed without any stopover outside the Community between the place of departure and the place of arrival of the passenger transport;
 - 2. the place of departure of the passenger transport is the first point of embarkation of the passengers within the Community, possibly after one stopover outside the Community;
 - 3. the place of arrival of the passenger transport is the last point of disembarkation foreseen within the Community for the passengers who embarked within the Community, possibly after one stopover outside the Community;
- e) in the case of delivery of gas through a system of natural gas located within the Community territory or through any network connected to such a system, of delivery of electricity or of delivery of thermal energy or of refrigerating agent through heating or cooling networks to a trader who is a taxable person, the place of delivery shall be deemed to be the place where such trader has the seat of his/her economic activity or a fixed seat for which the goods are delivered or, in absence of such a seat, the

place where the trader has his/her permanent domicile or usual residence. *Trader who is a taxable person* means the taxable person the main activity of whom with respect to purchases of gas, electricity and thermal energy or refrigerating agent is the resale of such products and the own consumption of such products of whom is negligible;

f) in the case of delivery of gas through a system of natural gas located within the Community territory or through any network connected to such a system, of delivery of electricity or of delivery of thermal energy or of refrigerating agent through heating or cooling networks for which the situation provided by letter e) does not apply, the place of delivery is the place where the purchaser actually uses and consumes the goods. When the purchaser does not actually consume the gas, electricity, thermal energy or refrigerating agent or he/she consumes such only partially, it shall be deemed that the goods in question that were not consumed were used and consumed at the place where the purchaser has the seat of his/her economic activity or a fixed seat for which the goods are delivered. In absence of such a seat, it shall be deemed that the purchaser used and consumed the goods at the place where he/she had his/her domicile or usual residence.

(2) By way of derogation from the provisions under par. (1) letter a), in the case of sales at a distance performed from a Member State to Romania, the place of delivery shall be deemed to be in Romania if the delivery is performed to a purchaser who is a taxable person or a non-taxable legal person and who benefits from the derogation under art. 126 par. (4), or to any other non-taxable person and if the following conditions are fulfilled:

a) the total value of the sales at a distance the transport or dispatch to Romania of which is performed by a supplier in the calendar year when a certain sale at a distance takes place, inclusive of the value of such sale at a distance, or in the previous calendar year, exceeds the ceiling for sales at a distance of EUR 35,000 the equivalent in Lei of which is to be established by norms; or

b) the supplier opted in the Member State from where he/she transports the goods to have the sales at a distance which presuppose the transport of the goods from said Member State to Romania be deemed as taking place in Romania.

(3) The place of delivery is always Romania in the case of sales at a distance of excisable products which are performed from a Member State to non-taxable persons in Romania, other than non-taxable legal persons, and for which the ceiling provided under par. (2) letter a) is not applied.

(4) The derogation provided under par. (2) shall not apply to sales at a distance performed from another Member State to Romania:

a) of new means of transport;

b) of goods installed or assembled by the supplier or on behalf thereof;

c) of goods charged for value-added tax in the Member State of departure, according to the special regime provided by art. 313, 326 or 333 in Directive 112 on second-hand goods, works of art, collectors' items and antiques, as such are defined under art. 152² par. (1);

d) of gas through a system of natural gas located on Community territory or through any other network connected to such a system, of electricity, thermal energy or refrigerating agent through heating or cooling networks;

e) of excisable products, delivered to taxable persons and non-taxable legal persons.

(5) By way of derogation from the provisions of par. (1) letter a), the place of delivery for sales at a distance performed from Romania to another Member State shall be deemed to be in such Member State if the delivery is performed by a person who

does not communicate to the supplier a VAT identification number assigned by the Member State where the transport or dispatch ends, if the following conditions are fulfilled:

a) the total value of the sales at a distance performed by the supplier and presupposing the transport or dispatch of the goods from Romania to a certain Member State, in the calendar year when a certain sale at a distance takes place, including the value of such sale at a distance, or in the previous calendar year, exceeds the threshold for sales at a distance established according to the value-added tax legislation in the Member State in question, such sales having as place of delivery the state in question; or

b) the supplier opted in Romania to have all sales at a distance that presuppose the transport of the goods from Romania to another Member State be considered as taking place in such Member State. The option is exercised under the conditions established through norms and is applied to all the sales at a distance performed to the Member State in question in the calendar year when the option is exercised and in the following two calendar years.

(6) In the case of the sales at a distance of excisable products performed from Romania to non-taxable persons from another Member State, other than non-taxable legal persons, the place of delivery is always in the other Member State.

(7) The derogation provided under par. (5) does not apply to sales at a distance performed from Romania to another Member State:

a) of new means of transport;

b) of goods installed or assembled by the supplier or another person on behalf of the supplier;

c) of goods charged in Romania, according to the special regime for second-hand goods, works of art, collectors' items and antiques, as provided under art. 152²;

d) of gas through a system of natural gas located on Community territory or through any network connected to such a system, of electricity, thermal energy or refrigerating agents through heating or cooling networks;

e) of excisable products, delivered to non-taxable legal persons and taxable persons.

(8) For the enforcement of par. (2) - (7), when a sale at a distance presupposes the dispatch or transport of the goods sold from a third country and the import by the supplier in a Member State, other than the Member State where they are dispatched or transported in order to be delivered to the client, it shall be deemed that the goods were dispatched or transported from the Member State where the import is made.

ART. 132¹

Place of an intra-Community acquisition of goods

(1) The place of an intra-Community acquisition of goods shall be deemed to be the place where the goods are when the dispatch or transport thereof ends.

(2) In the case of the intra-Community acquisition of goods, as provided by art. 126 par. (3) letter a), if the purchaser communicates to the supplier a valid VAT identification number issued by the authorities of a Member State, other than the one where the intra-Community procurement takes place, according to par. (1), the place of the respective intra-Community acquisition shall be deemed to be in the Member State that issued the VAT identification number.

(3) If an intra-Community acquisition was subject to value-added tax in another Member State, according to par. (1) and in Romania, according to par. (2), the taxation base is to be appropriately reduced in Romania.

(4) The provisions of par. (2) shall not apply if the purchaser proves that the intra-Community acquisition was subject to value-added tax in the Member State where the intra-Community acquisition takes place, according to par. (1).

(5) The provisions of par. (2) shall not apply for triangular operations when the reseller-purchaser registered for VAT in Romania according to art. 153 proves that he/she performed a non-taxable intra-Community acquisition on the territory of another Member State, under similar conditions to those provided by art. 126 par. (8) letter b) in order to perform a subsequent delivery in that other Member State. The obligations of the persons involved in triangular operations are provided by norms.

ART. 132²

Place of an import of goods

(1) The place of an import of goods is considered the territory of the Member State where the goods are when they enter the Community territory.

(2) By way of exception from the provisions under par. (1), when the goods referred to in art. 131 letter a) which are not in free circulation are placed, upon entering the Community, under one of the regimes or situations referred to in art. 144 par. (1) letter a) points 1-7, the place of import for such goods is considered to be on the territory of the Member State where the goods cease to be placed under such regimes or situations.

(3) When the goods referred to in art. 131 letter b) which are in free circulation upon entering the Community are found in one of the situations that would allow them, had they been imported to the Community within the meaning of art. 131 letter a), to benefit from one of the regimes provided by art. 144 par. (1) letter a) point 1-7 or they are undergoing an internal transit procedure, the place of import is considered to be the Member State on the territory of which these regimes or this procedure cease.

ART. 133

Place of supply of services

(1) In order to apply the rules regarding the place of supply of services:

a) a taxable person that also carries out activities or operations which are not considered taxable according to art. 126 par. (1) – (4) is deemed a taxable person for all the services he/she was supplied;

b) a non-taxable legal persons that is registered for VAT is considered a taxable person.

(2) The place of supply of services to a taxable person acting as such is the place where the person in question that receives the services has the seat of its economic activity. If the services are supplied to a fixed seat of the taxable person which is in a different place than the one where the person has the seat of his/her economic activity, the place of supply of services is the place where the fixed seat of such person receiving the services is. In absence of such a place or fixed seat, the place of supply of the services is where the taxable person receiving such services has his/her permanent domicile or usual residence.

(3) The place of supply of the services to a non-taxable person is the place where the supplier has the seat of his/her economic activity. If the services are supplied from a fixed seat of the supplier which is in a different place than the one where the taxable person established the seat of his/her economic activity, the place of supply of the services is the place where such fixed seat is. In absence of such a place or fixed

seat, the place of supply of the services is the place where the supplier has his/her permanent domicile or usual residence.

(4) By way of exception from the provisions of par. (2) and (3) for the following supplies of services the place of supply is deemed to be:

a) the place where the movable goods are, for the supplies of services performed with respect to immovable goods, including the services supplied by experts and real estate agents, services of accommodation in the hospitality field or similar fields, like summer camps or camping areas, of granting of rights of use over immovable goods, for services of training and coordination of construction works, as well as services provided by architects and by site surveillance companies;

b) the place where the transport is made, according to the distances traveled, in the case of passenger transport services;

c) *** Repealed

d) the place of actual supply, for restaurant and catering services, except for those supplied on board of ships, aircrafts or trains during part of a passenger transport operation performed within the Community;

e) the place where the means of transport is actually placed at the client's disposal, in the case of short term rental of a means of transport. Short term means the possession or continuous use of the means of transport for a term of maximum 30 days and, in the case of ships, for a term of maximum 90 days;

f) the place of departure of the passenger transport, for restaurant and catering services actually supplied on board of ships, aircrafts or trains during part of a passenger transport operation performed within the Community. Part of a passenger transport operation performed within the Community means that part of the operation which is performed without any stopover outside the Community between the point of departure and the point of arrival of the passenger transport. The point of departure of a passenger transport means the first point established for the embarkation of the passengers within the Community, if applicable, after one stopover outside the Community. The place of arrival of a passenger transport means the last point established for disembarkation within the Community of the passengers who embarked within the Community, if applicable before a stopover outside the Community. In case of a round trip, the return route is considered a separate transport operation.

(5) By way of exception from the provisions under par. (3), the place of the following services is considered to be:

a) the place where the main operation is performed according to the provisions of this title, in the case of the services provided by an agent acting in the name and on behalf of another person and where the beneficiary is a non-taxable person;

b) the place where the transport takes place, proportionally with the distances traveled, in the case of services of transport of goods, other than intra-Community transport of goods, to non-taxable persons;

c) the place of departure of an intra-Community transport of goods, for the services of intra-Community transport of goods supplied to non-taxable persons. *Intra-Community transport of goods* means any transport of goods the place of departure and arrival of which are located on the territories of two different Member States. Place of departure means the place where the transport of goods actually begins, no matter the distances traveled to get to such place, and the place of arrival means the place where the transport of goods actually ends;

d) the place where the services are actually supplied to non-taxable persons, in the case of the following:

1. services consisting of activities accessory to transport, like loading, unloading, handling and services similar thereto;
2. services consisting of works on tangible movables goods;
3. valuations of tangible movable goods;
- e) the place where the beneficiary is established or has his/her permanent domicile or usual residence, if the beneficiary in question is a non-taxable person who is established or has his/her permanent domicile or usual residence outside the Community, in the case of the following services:
 1. the hiring out of movable tangible goods, with the exception of for all means of transport;
 2. leasing operations the object of which is the use of tangible movable goods, except for all means of transport;
 3. transfers and/or assignments of copyrights, patents, licenses, trademarks and similar rights;
 4. advertising services;
 5. the services of consultants, engineers, legal advisers and lawyers, accountants and chartered accountants, survey offices and other similar services, as well as data processing and provision of information;
 6. operations of financial-banking and insurance type, including reinsurances, with the exception of the hire of safes;
 7. the supply of staff;
 8. the provision of access to a system of natural gas located on the territory of the Community or to a network connected to such a system, to the electricity network or the heating or cooling networks, transport and distribution through such systems or networks, as well as other supplies of services directly related thereto;
 9. telecommunication services. Shall be deemed telecommunication services the services the object of which is the transmission, broadcasting and reception of signals, documents, images and sounds or information of any kind, through cable, radio, optical means or other electromagnetic means, including the transfer of the right to use the means for such transmissions, broadcastings and receptions. Telecommunication services also include the provision of access to the world information network. If the telecommunication services are supplied by a person who has the seat of his/her economic activity outside the Community or who has a fixed seat outside the Community and the services are supplied from such seat or who, in absence of a seat of the economic activity thereof or of a fixed seat, has his/her permanent domicile or usual residence outside the Community, to a non-taxable person who is established, has his/her permanent domicile or usual residence within the Community, it shall be deemed that the place of supply is in Romania, if the services were actually used in Romania;
 10. radio and television services. If radio and television services are supplied by a person who has his/her fixed seat of the economic activity outside the Community or who has a fixed seat outside the Community from which the services are supplied or who, in absence of a seat of the economic activity or of a fixed seat, has a permanent domicile or usual residence outside the Community, to a non-taxable person who is established in, who has a permanent domicile or usual residence within the Community, it shall be considered that the place of supply is Romania if the services have been actually used in Romania;
 11. services supplied by electronic means. In the case of services supplied by electronic means which are supplied by a person having the seat of the economic activity outside the Community or a fixed seat outside the Community from which the

services are supplied or who, in absence of a seat of the economic activity or of a fixed seat, has his/her permanent domicile or usual residence outside the Community, to a non-taxable person who is seated or has his/her permanent domicile or usual residence in Romania, the place of supply shall be considered to be in Romania;

12. the obligation to refrain from performing or exercising, either in total or in part, an economic activity or a right provided by the present letter;

f) the place where the activities are actually carried out, in the case of main and auxiliary services related to cultural, artistic, sports, scientific, educational, entertainment activities or activities similar thereto, like fairs and exhibitions, including in the case of the services supplied by the organizers of these activities which are supplied to non-taxable persons.

(6) By way of exception from the provisions under par. (3), for services of renting of means of transport, other than those of short-term renting, and for the services of leasing of means of transport, it shall be considered that the place of supply is:

a) in Romania, when these services are supplied by a taxable person who has the seat of his/her economic activity or a fixed seat outside the Community from which the services are supplied, to a beneficiary who is a non-taxable person seated or with the permanent domicile or usual residence in Romania, if the actual use and exploitation of the services takes place in Romania;

b) outside the Community, when the services are supplied by a taxable person who has the seat of his/her economic activity or a fixed seat in Romania from which the services are supplied, to a beneficiary who is a non-taxable person seated or with a permanent domicile or usual residence outside the Community, if the actual use and exploitation of the services takes place outside the Community.

(7) By way of exception from the provisions under par. (2), the place of supply of the following services is considered to be:

a) in Romania, for the services consisting of activities accessory to transport, like loading, unloading, handling and services similar thereto, services consisting of works performed on tangible movable goods and valuations of tangible movable goods, services of transport of goods performed in Romania, when such services are supplied by a taxable person who is not established on the territory of the Community, if the actual use and exploitation of the services take place in Romania;

b) the place where the events are actually performed, for the services related to provision of access to cultural, artistic, sports, scientific, educational, entertainment events and others of this kind, as well as for the auxiliary services related to the provisions of said access, when such services are supplied to a taxable person.

(8) By way of exception from the provisions under par. (2), for the services of transportation of goods performed outside the Community, when such services are supplied to a taxable person established in Romania, the place of supply is considered to be outside the Community if the actual use and exploitation of the services takes place outside the Community. For purposes of application of the present paragraph, the services of transportation of goods carried out outside the Community are the services of transportation the point of departure and arrival of which is outside the Community and they are deemed to be actually used and exploited outside the Community.

CHAPTER VI

Generating event and chargeability of value-added tax

ART. 134

Generating event and chargeability - definitions

(1) The *generating event for the tax* is the event by which the legal conditions necessary for the chargeability of tax are realized.

(2) The *chargeability* of the value-added tax represents the date on which the fiscal authority becomes entitled by law to request the value-added tax from the payers thereof, even if the payment of such tax can be postponed.

(3) The chargeability of the payment of the value-added tax represents the date on which a person is bound to pay the tax to the state budget, as per the provisions of art. 157 par. (1). This date also determines the moment when delay penalties are owed for non-payment of the tax.

(4) The regime of taxation applicable for taxable operations is the regime in force on the date when the generating event occurs, except for the cases provided under art. 134² par. (2), for which the taxation regime in force on the date of chargeability of the tax is to be applied.

(5) In the case of change of the taxation regime a regularization shall be made in order to apply the taxation regime in force on the date of the delivery of goods or supply of services for the cases provided by art. 134² par. (2) letter a), only if the invoice is issued for the partial counter-value of the delivery of goods or supply of services and by art. 134² par. (2) letter b), if an advance was collected for the partial value of the delivery of goods or supply of services. The provisions of this paragraph are not to apply for small enterprises provided under art. 152, which registered for VAT as per art. 153.

(6) By way of exception from the provisions under par. (4) and (5), the provisions of art. 140 par. (3) and (4) are to apply in case of amendments of rates and for the operations provided by art. 160 the applicable regime is that valid on the date when the tax becomes chargeable.

(7) In case of supplies of services for which advances were collected for the partial value of the supply of services and/or invoices were issued for the partial value of the supply of services until December 31st, 2009, inclusive, but the generating event occurs after such date, the provisions under par. (4) and (5) are to apply.

ART. 134¹

Generating event for deliveries of goods and supplies of services

(1) The generating event occurs on the date of delivery of the goods or on the date of supply of the services, with the exceptions provided by the present chapter.

(2) For the goods delivered based on a consignment contract, it shall be considered that the delivery of the goods from the consignor to the consignee takes place on the date the goods are delivered by the consignee to its customers.

(3) For the goods transmitted for testing of conformity check purposes, it shall be considered that the delivery of the goods takes place on the date of acceptance of such goods by the beneficiary.

(4) For the stocks available to the customer, it shall be considered that the delivery of the goods took place on the date the customer withdraws the goods from the stock to use them mainly for production activities.

(5) Consignment contracts, stocks available to the customer, goods delivered for testing and conformity check purposes are defined through norms.

(6) For deliveries of tangible goods, including movable ones, the date of delivery is the date when the right to dispose of the goods as owner arises. By way of exception to the above, in the case of contracts that provide that payment is made in installments or of any other type of contract which provides that ownership is assigned at the latest at the time of payment of the last amount due, with the exception of leasing contracts, the date of delivery is the date when the goods is handed over to the beneficiary.

(7) The supplies of services which imply settlements or successive payments, like construction-assembly services, consulting services, expert investigation services and other similar services, are considered performed on the date of issuance of the works status reports, the activity reports and other similar documents based on which the services performed are established or, as applicable, according to contractual provisions, on the date of acceptance thereof by the beneficiaries.

(8) In the case of deliveries of goods and supplies of services performed on a continuous basis, other than those provided under par. (7), like: deliveries of natural gas, water, telephone services, deliveries of electricity and others alike, it shall be deemed that the delivery/supply is performed on the dates specified in the contract for payment of the delivered goods or of the services supplied or on the date of issuance of an invoice, but the settlement period may not exceed one year.

(9) In the case of operations of renting, leasing, concession and tenancy of goods, the service is considered carried out on each date specified in the contract for payment performance.

(10) The supplies of services for which the value-added tax is owed by the beneficiary of the services according to art. 150 par. (2) and which are supplied on a continuous basis for a period longer than one year and do not cause settlements or payments during such period, shall be considered performed on the date of expiry of each calendar year, as long as the supply of services has not ceased.

ART. 134²

Chargeability for deliveries of goods and supplies of services

(1) The value-added tax becomes chargeable on the date the generating event occurs.

(2) By way of derogation from the provisions of par. (1), the value-added tax becomes chargeable:

a) on the date of issuance of an invoice, before the date when the generating event occurs;

b) on the date the advance is collected, for advance payments performed before the date of occurrence of the generating event. Advances represent the partial or full payment of the counter-value of the goods and services which is performed before the date of delivery or supply thereof;

c) on the date of cash withdrawal for deliveries of goods or supplies of services performed through automatic vending machines, games machines or other similar machines.

(3) The value-added tax is chargeable on the date any of the events mentioned at art. 138 occurs. Nevertheless, the taxation regime, the applicable rates and the exchange rate are the same as for the basic operation that generated such events.

ART. 134³

Chargeability for intra-Community deliveries of goods which are exempt from tax

(1) By way of exception from the provisions of art. 134², in the case of an intra-Community delivery of goods exempt from value-added tax as per art. 143 par. (2), the tax becomes chargeable on the 15th day of the month following the one when the generating event occurred.

(2) By way of exception from the provisions of par. (1) above, the value-added tax becomes chargeable upon issuance of the invoice provided at art. 155 par. (1) or, as applicable, upon issuance of the auto-invoice provided under art. 155 par. (4), if the invoice or auto-invoice is issued before the 15th day of the month following the one of occurrence of the generating event.

ART. 135

Generating event and chargeability for intra-Community acquisitions of goods

(1) In the case of an intra-Community acquisition of goods, the generating event occurs on the date it would occur for deliveries of similar goods in the Member State where the acquisition is made.

(2) In the case of an intra-Community acquisition of goods, the value-added tax becomes chargeable on the 15th day of the month following that when the generating event occurred.

(3) By way of exception from the provisions under par. (2), the value-added tax becomes chargeable on the date of issuance of the invoice provided by the legislation of another Member State under the article equivalent to art. 155 par. (1) or, as applicable, on the date of issuance of the auto-invoice provided by art. 155 par.

(4) if the invoice or the auto-invoice is issued before the 15th day of the month following that when the generating event occurred.

ART. 136

Generating event and chargeability for import of goods

(1) If the goods are subject to customs duties, agricultural duties or other similar Community duties upon import, such duties being established as a result of a common policy, the generating event and the chargeability of the value-added tax occurs on the date of occurrence of the generating event and of the chargeability of said Community duties.

(2) If the goods are not subject to customs Community duties upon import as provided by par. (1) above, the generating event and the chargeability of the value-added tax occur on the date the generating event and chargeability of those Community duties would occur if the imported goods had been subject to such duties.

(3) If the goods are placed upon import under a special customs regime, as provided by art. 144 par. (1) letters a) and d), the generating event and the chargeability of the tax shall occur on the date the goods cease being placed under such regime.

CHAPTER VII

Base of taxation

ART. 137

Base of taxation for deliveries of goods and supplies of services performed within the country

(1) The base of taxation of the value-added tax is made up of the following:

a) for deliveries of goods and supplies of services other than those provided by letters b) and c), everything that constitutes a counterpart that has been or is to be obtained by the supplier or provider from the purchaser, beneficiary or a third, including the subsidies that are directly connected to the price of such operations;

b) for the operations provided by art. 128 par. (3) letter c), of the corresponding compensation;

c) for the operations provided by art. 128 par. (4) and (5), for the transfer provided by art. 128 par. (10) and for the intra-Community acquisitions considered to be for consideration and provided by art. 130¹ par. (2) and (3), the purchase price of the respective goods or of similar goods or, in absence of such purchase prices, the cost price established on the date of delivery thereof. If the goods are tangible movable assets, the base of taxation is to be established according to the procedure established through norms;

d) for the operations provided by art. 129 par. (4), the amount of the expenses performed by the taxable person for carrying out the supply of services;

e) in the case of the exchange provided by art. 130 and, in general, when the payment is partially or fully made in kind or when the value of the payment for a delivery of goods or a supply of services was not established by the parties or cannot be easily established, the base of taxation is to be considered as the market value for said delivery/supply. For purposes of the present title, *market value* means the total amount which a customer who was in the same sales stage as that when the delivery of goods or supply of services occurs would have to pay in order to obtain the goods or services in question at that time, under conditions of fair competition to an independent supplier or provider from the territory of the Member State where the delivery or provision is subject to value-added tax. When a comparable delivery of goods or provision of services cannot be established, the market value means:

1. for goods, an amount not lower than the purchase price of the goods or of similar goods or, in absence of a purchase price, the cost price established at the time of delivery;

2. for services, an amount not lower than the complete costs of the taxable person for the supply of the service.

(2) The base of taxation of the value-added tax includes the following:

a) taxes and duties, if the law does not provide otherwise, other than the value-added tax;

b) ancillary expenses, such as: commissions, packaging expenses, and transport and insurance costs, charged by the supplier/provider to the purchaser or beneficiary. The expenses invoiced by the provider of goods or supplier of services to the purchaser which form the object of a separate contract and are related to the

deliveries of goods or supplies of services in question, shall be deemed ancillary expenses.

(3) The base of taxation of the value-added tax is not to include the following:

- a) rebates, refunds, discounts, and other price reductions that are granted by suppliers directly to customers on the date of chargeability of the value-added tax;
- b) damages established by final and irrevocable court decisions, penalties and any other amounts requested for the total or partial non-fulfillment of contractual obligations, if the amounts are imposed over the negotiated prices and/or tariffs. Not to be excluded from the base of taxation are any amounts which, in fact, represent the counter-value of goods delivered or services supplied;
- c) interests, charged after the date of delivery or supply, for delayed payments;
- d) the value of packaging that circulates between the suppliers of a commodity and customers, by exchange, without invoicing;
- e) amounts paid by a taxable person in the name and on behalf of such person and which are later reimbursed to such person, as well as the amounts collected by a taxable person in the name and on behalf of another person.

ART. 138

Adjustment of the base of taxation

The base of taxation of the value-added tax is to be adjusted in the following situations:

- a) if an invoice was issued and afterwards the operation is wholly or partially cancelled before the delivery of the goods or the supply of the services;
- b) in case of total or partial refusals related to the quantity, quality or price of the goods delivered or of the services supplied, as well as in case of whole or partial cancellation of the contract for the delivery or supply in question as a result of a written agreement between the parties or of a final and irrevocable court judgment or following an arbitration proceeding;
- c) if the rebates, refunds, discounts, and other price reductions provided under art. 137 par. (3) letter a) are granted after delivery of the goods or supply of the services;
- d) if the counter-value of the goods delivered or of the services supplied cannot be collected due to the beneficiary's bankruptcy. Adjustment is allowed as of the date the court judgment regarding the closing of the procedure provided by Law no. 85/2006 on the insolvency procedure is delivered and is final and irrevocable;
- e) if the purchasers return the packages in which the commodities were dispatched, for the packages which circulate through invoicing.

ART. 138¹

Base of taxation for intra-Community acquisitions

(1) For intra-Community acquisitions of goods the base of taxation is to be established based on the same elements used according to art. 137 to determine the base of taxation as in case of delivery of the same goods within the country. In the case of an intra-Community acquisition of goods according to art. 130¹ par. (2) letter a), the base of taxation is determined according to the provisions of art. 137 par. (1) letter c) and of art. 137 par. (2).

(2) The base of taxation also comprises the excises owed or paid in Romania by the person who performs the intra-Community acquisition of a product that is subject to excises. When after the performance of the intra-Community acquisition of goods,

the person who acquired the goods obtains a refund of the excises paid in the Member State where the dispatch or transport of the goods started, the base of taxation of the intra-Community acquisition performed in Romania is correspondingly reduced.

ART. 139

Base of taxation for import

(1) The base of taxation for import of goods is the customs value of the goods, established as per the customs legislation in force, to which any other duties, taxes, commissions and charges owed outside Romania are to be added, as well as those owed as a result of the import of the goods in Romania, except for the value-added tax that is to be charged.

(2) The base of taxation comprises the ancillary expenses, like commissions and packing, transport and insurance expenses, which arise until the first destination of the goods in Romania, to the extent these expenses were not comprised in the base of taxation established according to par. (1). The first destination of the goods is the destination indicated in the transport document or in any other accompanying document of the goods when they enter Romania or, in absence of such documents, the first place of unloading of the goods in Romania.

(3) The base of taxation does not comprise the elements provided under art. 137 par. (3) letter a) - d).

ART. 139¹

Exchange rate

(1) If the elements used in establishing the base of taxation of an import of goods are expressed in a foreign currency, the exchange rate is to be established according to the Community provisions that regulate the calculation of the value in customs.

(2) If the elements used in establishing the base of taxation of an operation, other than an import of goods, are expressed in a foreign currency, the exchange rate to be applied is the last exchange rate communicated by the National Bank of Romania or the exchange rate used by the bank through which the settlements are performed on the date when the tax becomes chargeable for the operation in question.

CHAPTER VIII

Rates of value-added tax

ART. 140

Rates of value-added tax

(1) The standard rate of value-added tax is of 24% and is applied on the base of taxation for the taxable operations which are not exempt from tax or which are not subject to reduced rates of value-added tax.

(2) The reduced rate of 9% is to apply to the base of taxation for the following supplies of services and/or deliveries of goods:

a) services consisting of granting access to castles, museums, memorial houses, historical monuments, architectural and archeological monuments, zoos, botanical gardens, fairs, exhibitions and cultural and cinema events, other than those exempt according to art. 141 par. (1) letter m);

- b) delivery of school manuals, books, newspapers and magazines, with the exception of those intended exclusively or mainly for publicity;
- c) deliveries of prostheses and accessories thereof, except for dental prostheses;
- d) deliveries of orthopedic products;
- e) deliveries of medicines for human use and veterinarian use;
- f) accommodations within the hotel sector or within sectors with a similar function, including the rental of land prepared for camping.

(2¹) The reduced rate of 5% is to apply to the base of taxation for the delivery of dwellings as part of the social policy, including of the land on which they are built. The land on which the dwelling is built includes the footprint of such dwelling. For purposes of the present title, dwelling delivered as part of the social policy means:

- a) delivery of buildings, including of the land on which they are built, intended to be used as retirement homes;
- b) delivery of buildings, including of the land on which they are built, intended to be used as orphanages and recovery and rehabilitation centers for minors with disabilities;

c) delivery of dwellings with an useful area of at most 120 m², exclusive of outhouses, the value of which, inclusive of the land on which they are built, does not exceed the amount of Lei 380,000 excluding the value-added tax, and which are purchased by a single person or a family. The useful area of the building is that defined through the Law on Dwellings no. 114/1996, republished, as subsequently amended and supplemented. Outhouses as those defined in Law no. 50/1991 on the authorization of performance of construction works, republished, as subsequently amended and supplemented. The reduced rate is to be applied only for the dwellings which at the time of the sale can be replaced as such and if the land on which the construction is built does not exceed an area of 250 m², including the footprint of the dwelling in case of individual dwellings. For real estate with more than two dwellings, the undivided share of the land corresponding to each dwelling may not exceed an area of 250 m², including the footprint of each dwelling. Any single person or family may purchase only one dwelling with a reduced rate of 5%, respectively:

1. in the case of singles, they should not have owned any dwelling purchased at the rate of 5%;

2. in the case of families, the spouses either together or separately should not have owned nor should they own any dwelling purchased at the rate of 5%;

d) delivery of buildings, including of the land on which such buildings are built, to city halls in order to be assigned by them with subsidized rent to persons or families that have an economic situation which does not allow them to own or lease a dwelling under the market conditions.

(3) The rate applicable is the one in force on the date the generative event occurs, except for the cases provided by art. 134² par. (2), for which the rate in force on the date of chargeability of the value-added tax is to apply.

(4) In the case of a change of rate it shall be resorted to regularization in order to apply the rates in force on the date of the delivery of goods or of the supply of services, for the cases provided by art. 134² par. (2).

(5) The rate applicable for the import of goods is the rate applicable in Romania for the delivery of the same good.

(6) The rate applicable for intra-Community acquisitions of goods is the rate applicable in Romania for the delivery of the same good and which is in force on the date the value-added tax becomes chargeable.

CHAPTER IX

Operations exempt from tax

ART. 141

Exemptions for operations inside the country

(1) The following operations of public interest are exempt from the value-added tax:

a) hospital treatment, medical treatment, and closely-related operations carried out by units authorized for such activities, regardless of the form of organization, such as hospitals, sanatoriums, rural or urban health centers, dispensaries, medical practices and laboratories, centers for medical care and diagnosis, bases of treatment and recuperation, emergency stations and other units authorized to carry out such activities;

b) supplies of services performed as part of their profession by dentists and dental technicians, as well as the delivery of dental prostheses performed by dentists and dental technicians;

c) supplies of medical care and supervisory services performed by medical and paramedical personnel as per the legal provisions applicable in the field;

d) transport of sick or injured persons in vehicles specially designed for this purpose by entities authorized in this respect;

e) deliveries of organs, blood and milk, of human origin;

f) educational activities provided by the Law on education no. 84/1995, republished, as subsequently amended and supplemented, vocational training of adults, as well as supplies of services and deliveries of goods closely related to these activities and performed by public institutions or other authorized institutions;

g) deliveries of goods or supplies of services performed by dormitories and canteens organized in connection with the public institutions and authorized entities provided by letter f) for the exclusive use of the persons directly involved in the activities that are exempt as per letter f);

h) private tutoring activities performed by teachers from the school, pre-university and university fields;

i) supplies of services and/or deliveries of goods closely related to social assistance and/or protection performed by public institutions or other entities recognized as having a social character, including those supplied by retirement homes;

j) supplies of services and/or deliveries of goods closely related to the protection of children and youth performed by public institutions or other entities recognized as having a social character;

k) supplies of services and/or deliveries of goods furnished for the collective benefit of members, in exchange for a fixed subscription fee according to the statute, by organizations without a patrimonial purpose that have an objective of a political, trade-union, religious, patriotic, philosophical, philanthropic, ownership, professional or civic nature, as well as the objective of representing the interest of their members, on the condition that such exemption does not cause distortions of competition;

l) supplies of services closely related to the practice of sports or physical education performed by organizations without a patrimonial purpose for persons who practice sports or physical education;

m) supplies of cultural services and/or deliveries of goods closely related to such services performed by public institutions or other cultural bodies without a patrimonial purpose and recognized as such by the Ministry of Culture and National Heritage;

n) supplies of services and/or deliveries of goods performed by persons whose operations are exempt as provided by letters a), f) and i) - m), in connection with events intended to raise financial support and organized for their exclusive benefit, provided that such exemptions do not produce distortions of competition;

o) activities specific to public radio and television stations, other than activities of commercial nature;

p) public postal services, as well as the delivery of goods corresponding thereto;

q) the supplies of services performed by independent groups of persons whose operations are exempt or do not fall under the scope of application of the value-added tax and which are created for purposes of supply to their members of services directly related to the performance of their activity, in case these groups request from their members only the refund of the share of common expenses, within the limits and under the conditions established through norms and provided this exemption does not produce distortions of competition;

r) supply of staff by religious or philosophical institutions for the purposes of the activities provided by letters a), f), i) and j).

(2) The following operations are also exempt from value-added tax:

a) the supply of the following financial-banking services:

1. the granting and negotiation of credit and the management of credit by the person granting it;

2. the negotiation of credit guarantees or of other collaterals or any operations with such guarantees, as well as the management of credit guarantees by the person granting the credit;

3. transactions, including negotiations with respect to deposit accounts or current accounts, payments, transfers, receivables, checks and other negotiable instruments, except for debtor recovery;

4. transactions, including negotiation related to currency, banknotes and coins used as legal means of payment, with the exception of collectors' items, namely of golden coins, silver coins and coins of other metals or banknotes which are not normally used as legal means of payment or coins that are collectors' items;

5. transactions, including negotiation but excluding management and safekeeping of shares, quota shares in trading companies or associations, secured bonds and other financial instruments, with the exception of documents which establish rights over goods;

6. the administration of special investment funds;

b) insurance and/or reinsurance operations, as well as the supply of services in connection with insurance and/or reinsurance operations that are performed by taxable persons who intermediate such operations;

c) betting, lotteries and other types of gambling performed by persons authorized under the law to carry out such activities;

d) deliveries at nominal value of postal stamps used for postal services, of fiscal stamps and other similar stamps;

e) tenancy, concession, renting and leasing of immovable goods, with the following exceptions:

1. the operations of accommodations that are performed in the hotel sector or sectors with a similar function, including the rental of land prepared for camping;

2. the renting of spaces or locations for parking of vehicles;

3. the rental of equipment and machinery that is affixed to immovable goods;

4. the rental of safes;

f) deliveries of constructions/parts of constructions and of the lands on which they are built, as well as of any other lands. By way of exception, the exemption shall not apply for the delivery of new constructions, of new parts of constructions or of building lands. For purposes of the present article, the following definitions apply:

1. *building land* is any land, either arranged or not, on which constructions can be erected as per the legislation in force;

2. *construction* means any structured fixed in or the ground;

3. *delivery of a new construction or of a part thereof* means the delivery performed at the latest by December 31st of the year following the year of first occupation or used of the construction or of a part thereof, as applicable, after transformation;

4. a new construction also comprises any transformed construction or transformed part of a construction, if the cost of transformation, excluding the value-added tax, is of at least 50% of the market value of the construction or of the part of the construction, such as the market value is established through an expert investigation report, and exclusive of the value of the land after transformation;

g) deliveries of goods that were used in an exempt activity based on the present article, if the value-added tax related to such goods was not deducted, as well as deliveries of goods whose acquisition was excluded from the right of deduction according to art. 145 par. (5) letter b) or of the total limitation of the right of deduction as per art. 145^{^1}.

(3) Any taxable person may elect to tax operations provided at par. (2) letters e) and f), under the conditions established by norms.

ART. 142

Exemptions for imports of goods and for intra-Community acquisitions

(1) Exempt from the value-added tax are:

a) the import and intra-Community acquisition of goods whose delivery in Romania is in any situation exempt from value-added tax inside the country;

b) the intra-Community delivery of goods the import of which in Romania is in any situation exempt from value-added tax, as per the present article;

c) the intra-Community acquisition of goods for which, according to art. 145 par. (2) letters b) – d), the person who purchases the goods would be entitled in any situation to the whole refund of the tax owed if said acquisition were not exempt;

d) the definitive import of goods which fulfill the requirements for exemption provided by: Directive 83/181/EEC of the Council of March 28, 1983 which determines the domain of art. 14 (1) (d) in Directive 77/388/EEC on the exemption from payment of value-added tax for the final import of certain commodities, published in the Official Journal of the European Communities (OJEC) no. L 105 of April 23rd, 1983, as subsequently amended and supplemented, Directive 2007/74/EC of the Council of December 20th, 2007 on the exemption from value-added tax and excises of goods imported by persons travelling from third countries, published in the Official Journal of the European Communities (OJEC) no. L 346 of December 29th, 2007, and Directive 79/2006/EC of the Council of October 5th, 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries, published in the Official Journal of the European Union no. L 286 of October 17th, 2006;

e) the import of goods exempt from custom duties under a diplomatic or consular regime;

e¹) the import of goods by the European Community, the European Community of Nuclear Power, the Central European Bank, the European Investment Bank or by the bodies incorporated by the Communities to which the Protocol on April 8th, 1965 on privileges and immunities of the European Communities applies, within the limits and under the conditions established through the protocol in question and through the agreements of enforcement of said protocol or through the seat agreements, to the extent they do not lead to distortions in competition;

f) the import of goods performed in Romania by international bodies, other than those mentioned under letter e¹), which are recognized as such by the public authorities in Romania, as well as by the members thereof, within the limits and under the conditions established by the international conventions of incorporation of such bodies or by the seat agreements;

g) the import of goods performed in Romania by the armed forces of foreign states that are members of NATO for use by said armed forces or by the civilian personnel accompanying the armed forces or for the provisioning of their canteens, in the cases where the forces are taking part in the common defense effort. This includes the import performed by the forces of Great Britain and Northern Ireland established in the Isle of Cyprus, as per the Treaty of establishment of the Republic of Cyprus of August 16th, 1960, for the use by said armed forces or by the civilian personnel accompanying the armed forces or for the provisioning of their canteens;

h) reimport of goods in Romania performed by the person who exported the goods outside the Community, if the goods are in the same state as they were at the time of export and if the import in question benefits from exemption from customs duties;

i) reimport of goods in Romania performed by the person who exported the goods outside the Community in order to be subject to repairs, transformations, adaptations, assembly or other works performed on tangible movable goods, provided that such exemption be limited to the value of the goods at the time of export thereof outside the Community;

j) the import performed in ports by fishing enterprises of fished products that are unprocessed or after they were canned for selling purposes, but before delivery;

k) the import of gas through a system of natural gas or through any network connected to such a system or the import of gas introduced from a ship which transports the gas in a system of natural gas or in a network of pipes with upstream supply, the import of electricity, the import of thermal energy or refrigerating agents through heating or cooling networks;

l) the import in Romania of goods that were transported from a third territory or a third country, when the delivery of such goods by the importer is an exempt delivery according to art. 143 par. (2);

m) the import of gold performed by the National Bank of Romania.

(2) When applicable, shall be established through norms the documents necessary to justify the value-added tax exemption for the operations provided under par. (1) and, as applicable, the procedure and conditions that must be fulfilled for the enforcement of the tax exemption.

ART. 143

Exemptions for exports or other similar operations, for intra-Community deliveries and for international and intra-Community transport

(1) Exempt from the value-added tax are:

- a) the deliveries of goods dispatched or transported outside the Community by the supplier or by another person on account of the supplier;
- b) deliveries of goods dispatched or transported outside the Community by the purchaser who is not established in Romania or by another person on account of the purchaser, except for the goods transported by the purchaser that are used for the equipping or provisioning of recreational boats and private aircraft or any private means of transport. The delivery of goods transported in the personal luggage of travelers who are not established in the Community is also exempt if the following conditions are fulfilled:
- the traveler is not established in the Community, or the address or permanent domicile thereof is not inside the Community. The address or permanent domicile means the place thus specified in the passport, the identity card or another document recognized as identification document by the Ministry of Administration and Interior
 - the goods are transported outside the Community before the end of the third month following the month of delivery;
 - the total value of the delivery, plus VAT, is higher than the equivalent in Lei of EUR 175 established annually through the application of the exchange rate from the first business day of the month of October and valid until January 1st of the following year;
 - the proof of export is to be made through invoice or another document replacing the invoice and bearing the endorsement of the customs office upon exit from the Community;
- c) supplies of services, including transport and supplies of services ancillary to transport, other than those provided by art. 141, which are directly connected with the export of goods;
- d) supplies of services, including transport and supplies of services ancillary to transport, other than those provided by art. 141, if they are directly connected with the import of goods and the value thereof is included in the base of taxation of the imported goods as per art. 139;
- e) supplies of services performed in Romania over movable goods acquired or imported to be processed in Romania and which are subsequently transported outside the Community by the services supplier or by the client, if said client is not established in Romania, or by another person on behalf of either of them;
- f) intra-Community transport of goods, performed from and to the islands which form the autonomous regions Azores and Madeira, as well as the services ancillary thereto;
- g) international transport of passengers;
- h) in the case of ships used for international transport of persons and/or goods, for fishing or other economic activity, or for rescue or assistance at sea, the following operations:
1. the delivery, amendment, repairs, maintenance, charter, leasing and renting of ships, as well as delivery, leasing, renting, repairs and maintenance of equipment incorporated or used on ships, including fishing equipment;
 2. the delivery of fuels and supplies that are intended to be used on the ships, but including for warships recorded in the Combined Nomenclature (CN) under code 8906 10 00, which leave the country to be anchored in foreign ports, with the exception of supplies in the case of ships used for coastal fishing;
 3. the supplies of services, other than those provided under point 1, which are performed for the direct needs of the ships and/or for its cargo;
- i) in the case of aircraft used by airlines mainly for international transport of persons and/or products for consideration, the following operations:

1. the delivery, amendment, repairs, maintenance, leasing and renting of aircrafts, as well as the delivery, leasing, renting, repairs and maintenance of equipment intended for incorporation or use on the aircraft;
 2. the delivery of fuels and supplies intended to be used on the aircraft;
 3. the supply of services, other than those provided under point 1 or under art. 144¹, which is performed for the direct needs of aircrafts and/or of the cargo thereof;
- j) deliveries of goods and supplies of services for the benefit of diplomatic missions and consular offices, their personnel, as well as foreign citizens having diplomatic or consular status in Romania or in another Member State, under conditions of reciprocity;
- j¹) deliveries of goods and supplies of services to the European Community, the European Community of Nuclear Power, the Central European Bank, the European Investment Bank or to the bodies to which the Protocol of April 8th, 1965 on the privileges and immunities of the European Communities apply, within the limits and under the conditions established by the protocol in question and by the agreements of enforcement of the protocol in question or by the seat agreements, to the extent they do not lead to distortions in competition;
- k) deliveries of goods and supplies of services in favor of international bodies, other than those mentioned under letter j¹), which are recognized as such by the public authorities in Romania, as well as of the members of those bodies, within the limits and under the conditions established by the international conventions of establishment of these bodies or by the seat agreements;
- l) deliveries of goods not transported outside Romania and/or supplies of services performed in Romania and intended for the armed forces of the other states that are members of NATO for use by the armed forces or by the civilian personnel accompanying the armed forces or for the provisioning of their canteens, if the forces are taking part in a common defense effort;
- m) deliveries of goods and/or supplies of services to another Member State than Romania, which are intended to be used by the armed forces of a member state of NATO, other than the member state of destination, for use by the armed forces or by the civilian personnel accompanying the armed forces or for the provisioning of their canteens, if the forces are taking part in a common defense effort; delivery of goods or supply of services to the armed forces of the United Kingdom stationed in the Island of Cyprus, as per the Treaty of establishment of the Republic of Cyprus of August 16th, 1960, for the use by said armed forces or by the civilian personnel accompanying the armed forces or for the provisioning of their canteens;
- n) deliveries of gold to the National Bank of Romania;
- o) deliveries of goods to recognized bodies which transport or dispatch such goods outside the Community, as part of humanitarian, charitable or training activities; the exemption is granted through the return of the value-added tax according to a procedure established by order of the minister of public finance.

(2) The following are also exempt from value-added tax:

- a) intra-Community deliveries of goods to a person who communicates to the supplier a valid VAT identification number assigned by the fiscal authorities in another Member State, except for:
1. intra-Community deliveries performed by a small enterprise, other than intra-Community deliveries of new means of transport;
 2. intra-Community deliveries which were subject to the special regime for second-hand goods, works of art, collectors' items and antiques, as per the provisions of art. 152²;

b) intra-Community deliveries of new means of transport to a purchaser who does not communicate to the supplier a valid VAT identification number;

c) intra-Community deliveries of excisable products to a taxable person or a non-taxable legal person who does not communicate to the supplier a valid VAT identification number, if the transport of goods is performed according to art. 7 par. (4) and (5) or art. 16 in Directive 92/12/EEC of the Council of February 25th, 1992 on the general regime, storage, circulation and control of excisable products, published in the Official Journal of the European Communities (OJEC) no. L 76 of March 23rd, 1992, as subsequently amended and supplemented, with the exception of:

1. intra-Community deliveries performed by a small enterprise;
2. intra-Community deliveries of goods subject to the special regime of second-hand goods, works of art, collectors' items or antiques, as per the provisions of art. 152^{^2};

d) intra-Community deliveries of goods provided by art. 128 par. (10) which would benefit from the exemption provided by letter a) if they were performed to another taxable person, with the exception of intra-Community deliveries of goods subject to the special regime of second-hand goods, works of art, collectors' items and antiques, as per the provisions of art. 152^{^2}.

(3) The documents that are required to justify the exemption from value-added tax for operations provided in par. (1) and (2) and, as applicable, the procedures and conditions that must be satisfied for the application of exemptions from value-added tax are to be established by order of the minister of public finance, where this is the case.

ART. 144

Special exemptions related to the international traffic of goods

(1) Exempt from the value-added tax are:

a) deliveries of goods that shall be:

1. placed under a customs regime of temporary admission, with full exoneration from payment of the import duties;
2. presented to the customs authorities for customs clearance and, as applicable, placed under a necessary warehouse of temporary nature;
3. introduced in a free zone or in a free warehouse;
4. placed under a customs warehouse regime;
5. placed under a regime of active improvement, with suspension from payment of the import duties;
6. placed under an external customs transit regime;
7. admitted in the territorial waters:
 - to be incorporated on drilling or production platforms, for purpose of construction, repair, maintenance, amendment or re-equipment of these platforms or for the connection of these drilling or production platforms to the continent;
 - for the supply of fuel and provisioning of the drilling or production platforms;
8. placed under a VAT warehouse regime, defined as follows:
 - for excisable products, any location in Romania which is defined as fiscal warehouse for purposes of art. 4 letter (b) in the Directive 92/12/EEC, as subsequently amended and supplemented;
 - for goods, other than excisable products, a location situated in Romania and defined through norms;

- b) the delivery of goods performed in the locations under letter a), as well as the delivery of goods which are under one of the regimes or in one of the situations provide under letter a);
 - c) the supplies of services corresponding to the deliveries provided under letter a) or performed in the locations provided under letter a) for the goods which are under the regimes or in the situations provided under letter a);
 - d) the deliveries of goods which are still under an internal transit regime, as well as the supplies of services corresponding to such deliveries, other than those provided under art. 144¹;
 - e) the import of goods which are to be placed under a VAT warehouse regime.
- (2) The documents that are required to justify the exemption from value-added tax for operations provided in par. (1) and, as applicable, the procedures and conditions that must be satisfied for the application of exemptions from value-added tax are to be established by order of the minister of public finance.

ART. 144¹

Exemptions for agents

Are exempt from value-added tax the services supplied by the agents who act in the name and on account of another person, if such services are supplied in relation to the exempt operations provided under art. 143 and 144, with the exception of the operations provided under art. 143 par. (1) letter f) and par. (2) or in connection to the operations carried out outside the Community.

CHAPTER X Regime of deductions

ART. 145

Scope of application of the right of deduction

- (1) The right of deduction arises at the moment when the value-added tax becomes chargeable.
- (2) Any taxable person is entitled to deduct the value-added tax corresponding to acquisitions, if such acquisitions are intended to be used for the following operations:
 - a) taxable operations;
 - b) operations resulting from economic activities for which the place of delivery/supplies is considered to be abroad, if the tax would be deductible should those operations have been performed in Romania;
 - c) operations exempt from value-added tax as per art. 143, 144 and 144¹;
 - d) operations exempt from value-added tax as per art. 141 par. (2) letter a) point 1-5 and letter b) if the purchaser and the client is established outside the Community or if these operations are directly connected with goods that shall be exported in a state outside the Community, as well as in the case of the operations performed by agents acting in the name and on account of a another person when they intervene in the performance of such operations;
 - e) the operations provided under art. 128 par. (7) and art. 129 par. (7), if the value-added tax had been applied to the transfer in question.
- (3) If this is not against the provisions under par. (2), the taxable person has the right to deduct the value-added tax for the cases provided under art. 128 par. (8) and art. 129 par. (5) as well.

(4) Under the conditions established through norms, the rights of value-added tax deduction shall be granted for the acquisitions performed by a taxable person before the registration thereof for VAT as per art. 153.

(4¹) Under the conditions provided through norms, the right of deduction of the value-added tax for the acquisitions performed within the procedure of forced execution by a taxable person from a taxpayer who is declared inactive, as per art. 11, or from a taxable person that is temporarily inactive and registered as such with the trade register as per the legal provisions.

(5) The following are not deductible:

a) the value-added tax corresponding to the amounts paid in the name and on account of another person and which are then discounted thereto, as well as the tax corresponding to the amounts collected in the name and on account of another person which are not included in the base of taxation of the deliveries/supplies performed according to art. 137 par. (3) letter e);

b) the value-added tax owed or paid for the acquisitions of alcoholic beverages and tobacco products, with the exception of the cases in which these products are intended for to resale or to be used for supplies of services.

ART. 145¹

Special limitations of the right of deduction

(1) In the case of motor vehicles which are dedicated exclusively to passenger transport by road, with a maximum authorized weight not exceeding 3,500 kg and with no more than 9 passenger seats, including the driver's seat, 50% of the value-added tax corresponding to the acquisitions of these vehicles shall be deducted and, respectively, 50% of the value-added tax corresponding to the acquisitions of fuel intended to be used for the vehicles with the same characteristics which are owned or used by the taxable person in question, with the exception of the vehicles which fall under any of the following categories:

a) vehicles used exclusively for: intervention, repairs, guard and protection, courier services, transport of personnel to and from the place of activity, as well as vehicles especially adapted to be used as camera trucks, vehicles used by sales agents and recruitment agents;

b) vehicles used for passenger transport for consideration, including for taxi activity;

c) vehicles used for supply of services for consideration, including for lease to other persons, training by driving schools, transmission of use through a financial or operational leasing contract;

d) vehicles used for commercial purposes and, respectively, for resale.

(2) Acquisition of vehicles for purposes of par. (1) shall mean the purchase of a vehicle from Romania, the import or intra-Community acquisition of the vehicle.

(3) The provisions under par. (1) and (2) are to apply inclusively in the situation in which invoices were issued and/or advances were paid for the partial counter-value of the motor vehicles before January 1st, 2012 if the delivery thereof occurs after January 1st, 2012, inclusive.

(4) *** Repealed

(5) In the case of the excepted vehicles as per par. (1) the general rules of deduction established under art. 145 and art. 146 - 147¹ are to apply.

ART. 146

Conditions for the exercise of the right of deduction

(1) In order to exercise the right of value-added tax deduction, the taxable person must fulfill the following conditions:

a) for the value-added tax owed or paid and corresponding to the goods that have been or shall be delivered to the person in question or to the services that have been or shall be supplied in the person's benefit by a taxable person, he/she must have an invoice issued as per the provisions of art. 155;

b) for the value-added tax corresponding to the goods that have been or shall be delivered or to the services that have been or shall be supplied in the person's benefit, but for which the taxable person is bound to pay the value-added tax as per art. 150 par. (2) – (6), he/she must have an invoice issued in accordance with the provisions of art. 155 or the documents provided under art. 155¹ par. (1);

c) for the value-added tax paid for the import of goods, other than those provided at letter d), the person must have the customs declaration of import or the ascertaining deed issued by the customs bodies which should mention the taxable person as importer of the goods from the tax perspective, as well as documents which would attest the payment of the tax by the importer or by another person on account of the importer. The importers who hold a single authorization for simplified customs procedures issued by another Member State or who carry out imports of goods in Romania from the perspective of the VAT and for which they are not bound to submit customs declarations of import, they must have a declaration of import for VAT and excises;

d) for the value-added tax owed for the import of goods performed as per art. 157 par. (4) and (5), the person must have the customs declaration of import or the ascertaining document issued by the customs bodies which should mention the taxable person as importer of the goods for VAT, as well as the amount of tax owed. Also, the taxable person must record the value-added tax as collected tax in the value-added tax declaration corresponding to the fiscal period during which chargeability arises;

e) for the tax corresponding to an intra-Community acquisition of goods, the taxable person must have an invoice or the document provided by art. 155¹ par. (1);

f) for the tax corresponding to an operation assimilated to an intra-Community acquisition of goods, as provided by art. 130¹ par. (2) letter a), the taxable person must have the document provided under art. 155 par. (4) issued by the Member State from which the goods were transported or dispatched or the document provided by art. 155¹ par. (1).

(2) The cases in which the documents or obligations, other than those provided under par. (1) are to be presented or fulfilled in order to justify the right of value-added tax deduction shall be provided through norms.

ART. 147

Deduction of tax for taxable persons with a mixed regime and partially-taxable persons

(1) Any taxable person registered as payer of the value-added tax that carries out, or that is to carry out, both operations that allow the right of deduction and operations that do not allow the right of deduction is hereafter referred to as *payer of the value-added tax with a mixed regime*. The person that carries out both operations for which he/she does not have the capacity of taxable person as per the provisions of art. 127

and operations for which he/she has the capacity of taxable person shall be referred to as *partially-taxable person*.

(2) The right of deduction of the deductible value-added tax related to acquisitions performed by any payer of value-added tax with a mixed regime is to be determined according to the present article. The partially-taxable person does not have a right of deduction for acquisitions intended for the activity for which he/she does not have the capacity of taxable person. If the partially-taxable person carries out activities in the capacity of taxable person which lead both to operations with right of deduction and operations without right of deduction, such person shall be considered a mixed taxable person for the respective activities and shall apply the provisions of the present article. Under the conditions established through norms, the partially-taxable person may request the application of a special pro rata if he/she cannot keep separate records for the activity carried out as taxable person and for the activity for which he/she does not have the capacity of taxable person.

(3) Acquisitions that are intended exclusively to carry out operations that allow the right of deduction, including investments that are intended to carry out such operations, are to be mentioned in a purchase journal that is to be prepared separately for such operations and the value-added tax related to such is to be entirely deducted.

(4) Acquisitions that are intended exclusively to carry out operations that do not allow the right of deduction, as well as investments that are intended to carry out such operations, are to be mentioned in a purchase journal that is to be prepared separately for such operations and the value-added tax related to such is not to be deducted.

(5) Acquisitions for which the destination is not known, respectively if they are to be used to carry out operations that allow the right of deduction or operations that do not allow the right of deduction, or for which it is not possible to determine to what extent they are used or are to be used for operations that allow the right of deduction and operations that do not allow the right of deduction, are to be mentioned in a purchase journal that is to be prepared separately. The value-added tax related to such acquisitions is to be deducted based on pro rata.

(6) The pro-rata provided under par. (5) is determined as a ratio between:

a) the total amount, exclusive of the value-added tax, but inclusive of the subsidies directly related to the price, of the operations consisting of deliveries of goods and supplies of services which allow the exercise of the right of deduction, as the numerator; and

b) the total amount, exclusive of the value-added tax, of the operations provided at letter a) and the operations consisting of deliveries of goods and supplies of services which do not allow the exercise of the right of deduction, as the denominator. The amounts received from the state budget or the local budgets as financing for exempt operations without right of deduction or operations not inside the scope of application the value-added tax are to be included as well.

(7) The following are to be excluded from the calculation of the pro rata:

a) the value of any delivery of capital assets which have been used by the taxable person in its economic activity;

b) the value of any delivery of goods or provision of services to oneself performed by the taxable person and provided under art. 128 par. (4) and under art. 129 par. (4), as well as the transfer provided under art. 128 par. (10);

c) the value of the operations provided under art. 141 par. (2) letter a) and b), as well as of the real estate operations, other than those provided under letter a), to the extent such operations are ancillary to the main activity.

(8) The definitive pro rata is to be determined on an annual basis, and the calculation thereof includes all the operations provided under par. (6) for which the tax becomes chargeable during the respective calendar year. The final pro rata is to be determined as percentage and is to be rounded off to the figure of the immediately following units. A document presenting the method of calculation of the final pro rata is to be attached to the value-added tax declaration provided under art. 156², which is to include the adjustment provided by par. (12).

(9) Pro rata temporarily applicable for a year is either the final pro rata provided under par. (8) and determined for the previous year or the estimated pro rata based on the operations forecasted to be carried out during the current calendar year for the taxable persons for which the weight of the operations with right of deduction in the total operations changes in the current year as compared to the previous year. Taxable persons are required to communicate the level of the temporary pro rata applied, as well as the manner of determining such pro rata, to the competent fiscal body at the beginning of each fiscal year, not later than January 25th. In the case of a newly registered taxable person, the temporary pro rata applicable is the pro rata estimated based on the operations forecasted to be carried out during the current calendar year; such pro rata must be communicated at the latest on the date the taxable person must submit the first value-added tax deduction as provided by art. 156².

(10) The value-added tax to be deducted in a calendar year is temporarily determined by multiplying the value of the deductible tax provided by par. (5) for each fiscal period in that calendar year with the temporary pro rata provided under par. (9) and determined for the year in question.

(11) The value-added tax to be deducted for one calendar year is finally calculated by multiplying the total amount of the deductible tax for the calendar year in question and provided under par. (5) with the final pro rata provided under par. (8) and determined for the year in question.

(12) At the end of the year, the taxable persons with a mixed regime must adjust the temporarily deducted tax as follows:

a) the temporary tax deducted in one year and determined as per par. (10) is to be subtracted from the final value-added tax to be deducted which is determined as per par. (11);

b) the positive or negative difference, as applicable, resulting as per letter a) is to be registered in the row dedicated to settlements in the value-added tax declaration provided under art. 156² and corresponding to the last fiscal period of the year or in the value-added tax declaration corresponding to the last fiscal period of the taxable person in case of cancellation of the registration thereof.

(13) With respect to the deductible value-added tax corresponding to capital assets, as defined under art. 149 par. (1) and used for the operations provided under par. (5):

a) the first deduction is determined based on the temporary pro rata provided under par. (9) for the year in which the right of deduction arises. At the end of the year, the deduction is adjusted as per par. (12) based on the final pro rata provided under par. (8). This first adjustment is made on the total value of the initially deducted tax;

b) the subsequent adjustments take into account the fifth part for movable goods or the twentieth part for immovable goods, as follows:

1. the initial deductible tax is divided by 5 or 20;
2. the result of the calculation performed as per point 1 is multiplied by the final pro rata provided under par. (8) and corresponding to each of the following 4 or 19 years;
3. the value-added tax initially deducted in the first year as per the final pro rata is divided by 5 or 20;
4. the results of the calculations performed as per points 2 and 3 are compared and the positive or negative difference represents the adjustment that needs to be made which is registered in the row of regularizations in the value-added tax declaration provided under art. 156² and corresponding to the last fiscal period of the year.

(14) In special situations, when the pro rata calculated according to the provisions of the present article does not ensure the accurate determination of the deductible tax, the Ministry of Public Finance, acting through the specialized directorate and at the justified request of the taxable person, may:

- a) approve the application of a special pro rata. If the approval was granted during the year, the taxable persons are bound to recalculate the tax deducted as of the beginning of the year based on the special pro rata approved. The taxable person with a mixed regime may waive the application of the special pro rata only at the beginning of a calendar year and is bound to inform in this respect the competent fiscal body on or before January 25th of the year in question;
- b) authorize the taxable person to establish a new special pro rata for each sector of his/her economic activity, on condition of keeping separate records for each such sector.

(15) Based on the proposals of the competent fiscal body, the Ministry of Public Finance, acting through the specialized directorate thereof, may impose on the taxable person certain criteria of exercise of the right of deduction for the future operations thereof, namely:

- a) apply a special pro rata;
- b) apply a special pro rata for each sector of the person's economic activity;
- c) exercise the right of deduction only based on the direct allocation, as per the provisions of par. (3) and (4), for all the operations or only for part thereof;
- d) keep separate records for each sector of his/her economic activity.

(16) The provisions of par. (6) – (13) are to apply for the special pro rata provided under par. (14) and (15) as well. By way of exception from the provisions of par. (6), the following shall be considered for the calculation of the special pro rata:

- a) the specific operations decided upon by the Ministry of Public Finance, for the cases provided under par. (14) letter a) or par. (15) letter b);
- b) the operations performed for each sector of activity, for the cases provided under par. (14) letter b) or par. (15) letter b).

ART. 147¹

Right of deduction exercised through the value-added tax declaration

(1) Any taxable person registered for VAT as per art. 153 is entitled to subtract from the total value of the collected tax for a certain fiscal period the total value of the tax for which the right of deduction arose during the same period and can be exercised as per art. 145-147.

(2) If the conditions and formalities of exercise of the right of deduction are not fulfilled during the fiscal period of declaration or if the supporting documents provided by art. 146 were not received, the taxable person may exercise the right of deduction through the declaration for the fiscal period in which the aforementioned conditions

are fulfilled or through a subsequent declaration, but not for more than 5 consecutive years, as of January 1st of the year following the one in which the right of deduction arose.

(3) The conditions necessary for application of the provisions under par. (2) for the situation in which the right of deduction is exercised more than 3 consecutive years after the year in which it arose are to be established by norms.

(4) The right of deduction is exercised even if there is no collected tax or the tax to deduct is higher than the collected one for the fiscal period provided under par. (1) and (2).

ART. 147^{^2}

Reimbursement of the value-added tax to taxable persons not registered for VAT in Romania and reimbursement of the VAT by other Member States to taxable persons established in Romania

(1) As per the conditions established through norms:

a) the taxable person not established in Romania, who is established in another Member State, is not either registered or bound to be registered for VAT in Romania, may benefit from the reimbursement of the value-added tax paid for imports and acquisitions of goods/services performed in Romania;

b) the taxable person not registered and not bound to be registered for VAT in Romania who is not established within the Community may request the reimbursement of the value-added tax paid for imports and acquisitions of goods/services performed in Romania if, according to the laws of the country in which he/she is established, a taxable person established in Romania would have the same right of reimbursement with respect to VAT or other similar taxes/charges applied in the country in question;

c) the taxable person not registered and not bound to register for VAT in Romania, but who performs in Romania an exempt intra-Community delivery of new means of transport, may request the reimbursement of the tax paid for the acquisition performed by him/her in Romania of the new means of transport in question. The reimbursement may not exceed the value-added tax that would apply if the delivery by such person of the new means of transport in question were a taxable delivery. The right of deduction arises and can be exercised only at the time of the intra-Community delivery of the new means of transport;

d) the taxable person established in Romania who is not registered and not bound to be registered for VAT in Romania, may request the reimbursement of the value-added tax paid and corresponding to the operations provided under art. 145 par. (2) letter d) or in other situations provided through norms.

(2) The taxable person established in Romania may benefit from reimbursement of the VAT paid for imports and acquisitions of goods/services performed in another Member State under the conditions established through norms.

(3) If the reimbursement provided under par. (1) letter a) was obtained as a result of fraud or through an incorrect method, the competent fiscal bodies shall recover the amounts erroneously paid and any related penalties and interests without prejudice to the provisions regarding mutual assistance for VAT recovery.

(4) If any interest or administrative penalty was imposed but not paid, the competent fiscal bodies shall suspend any other additional reimbursement to the taxable person in question until the unpaid amount is paid.

ART. 147³

Value-added tax reimbursement to the taxable persons registered for VAT as per art. 153

(1) If the tax corresponding to the acquisitions performed by a taxable person registered for VAT as per art. 153 which is deductible for a certain fiscal period is higher than the value-added tax collected for taxable operations, the surplus resulting for the reporting period shall be hereinafter referred to as *the negative amount of value-added tax*.

(2) After the payable tax or the negative amount of tax is determined for the operations of the reporting fiscal period, the taxable persons must perform the regularizations provided by the present article through the value-added tax declaration provided under art. 156².

(3) The cumulative negative amount of value-added tax is determined by adding to the negative amount of the value-added tax for the fiscal period of reporting the balance of the negative amount of value-added tax carried forward from the declaration of the previous fiscal period if the reimbursement of such balance was not requested, and the negative differences of VAT established by the fiscal inspection bodies through decisions communicated until the date of submission of the declaration.

(4) The cumulative payable value-added tax is determined during the fiscal period of reporting by adding to the value-added tax payable for the fiscal period of reporting the amounts not paid to the state budget until the date of submission of the VAT declaration provided under art. 156² from the payable balance of the previous fiscal period, and the amounts not paid to the state budget until the date of submission of the declaration for differences of payable VAT established by the tax inspection bodies through decisions communicated until the date of submission of such declaration.

(5) Through the declaration provided under art. 156², the taxable persons must determine the differences between the amounts provided under par. (3) and (4) which represent the value-added tax regularizations and the establishment of the balance of payable tax or of the negative tax balance. If the cumulative payable tax is higher than the cumulative negative amount of tax, the result will be a payable balance for the fiscal period of reporting. If the cumulative negative amount of tax is higher than the cumulative payable tax, the result will be a balance of the negative amount of tax for the fiscal period of reporting.

(6) The taxable persons registered as per art. 153 may request the reimbursement of the balance of the negative amount of tax for the fiscal period of reporting by checking the corresponding box in the value-added tax declaration from the fiscal period of reporting and thus the declaration will also be a reimbursement request, or they can carry forward the balance of the negative amount in the declaration for the following fiscal period. If the taxable person requests the reimbursement of the balance of the negative amount of tax, such balance shall not be carried forward to the following fiscal period. A balance of negative amount of tax from any fiscal period of reporting which is lower than Lei 5,000, inclusive, cannot be requested for reimbursement and such balance shall be mandatorily carried forward to the declaration of the following fiscal period.

(7) In the case of the taxable persons who are absorbed by another taxable person, the balance of the negative amount of value-added tax for which reimbursement was

not requested shall be taken over in the VAT declaration of the person who took over the activity.

(8) If two or several taxable persons merge, the taxable person who takes over the activity of the others also takes over the payable value-added tax, as well as the balance of the negative amount of value-added tax for which reimbursement was not requested through the VAT declarations of the persons who were liquidated on occasion of the merger.

(9) The reimbursement of the balance of the negative amount of value-added tax shall be made by the fiscal bodies, under the conditions and according to the procedures established through the norms in force.

(10) For the operations exempt from value-added tax with right of deduction provided by art. 143 par. (1) letters b), j), k), l) and o), the persons not registered for VAT according to art. 153 may benefit from the reimbursement of the value-added tax as per the procedure provided through order of the minister of public finance.

ART. 148

Adjustment of deductible value-added tax in case of acquisitions of goods and services, other than capital assets

If the rules related to delivery to oneself or supply to oneself are not applicable, the initial deduction is to be adjusted in the following cases:

- a) the deduction is higher or lower than the one the taxable person was entitled to operate;
- b) if there are amendments of the elements taken into account when determining the deductible amount, and such amendments occurred after the submission of the VAT declaration, including in the cases provided at art. 138;
- c) the taxable person loses the right of tax deduction for the movable goods not delivered and the services not used at the time of loss of the right of deduction.

ART. 149

Adjustment of deductible value-added tax for capital assets

(1) For purposes of the present article:

- a) capital assets are all fixed tangible assets defined under art. 125¹ par. (1) point 3, as well as operations of construction, transformation or modernization of immovable assets, exclusive of works of repair or maintenance of such assets, even if such operations are performed by the beneficiary of a renting agreement, that of a leasing agreement or any other kind of agreement through which the fixed tangible assets are placed at the disposal of other persons; shall not be considered capital assets the fixed tangible assets subject to depreciation the normal lifetime of which set for fiscal depreciation purposes is lower than 5 years; fixed tangible assets of the nature of those subject to depreciation which form the object of leasing are considered capital assets of the lessor/financier if the minimum limit of the normal lifetime thereof is equal to or higher than 5 years;
- b) the goods subject to renting, leasing, concession or any other method of placement thereof at the disposal of others are considered capital assets belonging to the person who is renting them, leasing them or placing them at the disposal of another person;
- c) reusable packages are not considered capital assets;

d) the deductible value-added tax corresponding to capital assets is the tax paid or owed for any operation related to the acquisition, manufacturing, construction, transformation or modernization of such assets, exclusive of the value-added tax paid or owed for repairs or maintenance of such assets or that corresponding to the acquisition of the spare parts used for the repair or maintenance of capital assets.

(2) Provided the rules of delivery to oneself or supply to oneself do not apply, the deductible value-added tax corresponding to capital assets is to be adjusted in the situations provided under par. (4) letter a) – d):

a) for a term of 5 years for capital assets acquired or manufactured, other than those provided under letter b);

b) for a term of 20 years, for the construction or acquisition of a movable good, as well as for the transformation or modernization of an immovable good, if the value of each transformation or modernization is of at least 20% of the total value of the movable good thus transformed or modernized.

(3) The adjustment period starts:

a) on January 1st of the year in which the assets were acquired or manufactured, for the capital assets provided at par. (2) letter a) if they were acquired or manufactured after accession date;

b) on January 1st of the year in which the assets are received, for the capital assets provided at par. (2) letter b) which are built and for the entire amount of the deductible value-added tax corresponding to the capital assets, including for the tax paid or owed before accession date, if the year of first use is the year of accession or another year subsequent to the year of accession;

c) on January 1st of the year in which the assets were acquired, for the capital assets provided under par. (2) letter b) which are acquired and for the entire amount of deductible value-added tax corresponding to the capital assets, including for the tax paid or owed before accession date, if the legal formalities for transfer of ownership from the seller to the purchaser were fulfilled in the year of accession or an year subsequent to the year of accession;

d) on January 1st of the year in which the assets are used for the first time after transformation or modernization, for the transformations or modernizations of capital assets provided under par. (2) letter b) the value of which is of at least 20% of the total value of the immovable asset that was transformed or modernized and for the amount of deductible value-added tax corresponding to the transformation or modernization that was paid or owed before accession date, if the year of first use after transformation or modernization is the year of accession or an year subsequent to accession.

(4) The adjustment of the deductible tax provided under par. (1) letter d) is made:

a) in the situation in which the capital asset is used by the taxable person:

1. wholly or partially for other purposes than the economic activities thereof;
2. for the performance of operations without right of deduction of the value-added tax;
3. for the performance of operations with right of deduction of the value-added tax to an extent different than the initial deduction;

b) in the cases in which amendments of the elements used to calculate the deducted tax arise;

c) if any capital asset the right of deduction of which was entirely or partially limited forms the object of any operation for which the value-added tax is deductible. In the case of a delivery of goods, the additional value of the value-added tax that is to be deducted is limited to the value of the tax collected for the delivery of the asset in question;

d) if the capital asset ceases to exist, except for the cases in which it is proven that the capital asset in question formed the object of a delivery or of a delivery to oneself for which the tax is deductible;

e) in the cases provided at art. 138.

(5) The adjustment of the deductible value-added tax is made as follows:

a) for the cases provided under par. (4) letter a), the adjustment is performed during the adjustment period provided under par. (2). The adjustment of the deduction is made during the fiscal period in which the event generating the adjustment occurs and for the entire tax corresponding to the period left from the adjustment period, including the year in which the change of use arises. Transitory rules for the situation in which for the year 2007 the adjustment provided under par. (4) letter a) was performed for the fifth or, as applicable, the twentieth part of the initially deducted tax are to be provided through norms;

b) for the case provided under par. (4) letter b), the adjustment is performed by the taxable persons who applied a deduction pro rata for the capital asset. The adjustment represents the fifth or, as applicable, the twentieth part of the initially deducted tax and is performed in the last fiscal period of the calendar year for each year in which amendments of the elements of the tax deducted during the adjustment period provided under par. (2) arise;

c) for the cases provided under par. (4) letter c) and d), the adjustment is performed in the fiscal period in which the event generating the adjustment occurs and it is performed for the whole tax corresponding to the period left from the adjustment period, including the year in which the adjustment obligation arises;

d) for the cases provided under par. (4) letter e), the adjustment is performed when the situations listed under art. 138 arise, according to the procedure provided by norms.

(5¹) If, during the adjustment period, events occur which generate adjustment in favor of the taxable person or of the state, the adjustments provided under par. (5) letter a) and c) shall be performed successively for the same capital asset during the adjustment period or anytime the events in question occur.

(6) The taxable person must keep records of the capital assets which form the object of adjustment of the deductible value-added tax in order to allow control of the deductible tax and of the adjustments performed. These records must be kept for a period starting on the moment the tax corresponding to the acquisition of the capital asset becomes chargeable and ending 5 years after expiry of the period during which the adjustment of the deduction can be requested. Any other records, documents and journals related to capital assets must be kept for the same period.

(7) The provisions of the present article do not apply in the case in which the amount that would result after the adjustments is negligible as per the provisions of the norms.

CHAPTER XI

Payers of value-added tax

ART. 150

Payer of value-added tax for operations taxable in Romania

(1) The payer of value-added tax owed as per the provisions of the present title is the taxable person who performs deliveries of goods or supplies of services, with the

exception of the cases in which the beneficiary is bound to pay the tax according to par. (2) - (6) and art. 160.

(2) Value-added tax is owed by any taxable person, including non-taxable legal persons registered for VAT as per art.153 or art. 153¹, who is a beneficiary of the services the place of supply of which is in Romania according to art. 133 par. (2), and which are supplied by a taxable person who is not established in Romania or not considered to be established in Romania for the supplies of services in question according to the provisions of art. 125¹ par. (2), even if such person is registered in Romania according to art. 153 par. (4) or (5).

(3) Value-added tax is owed by any person registered according to art. 153 or 153¹ who is delivered natural gas or electricity under the conditions provided by art. 132 par. (1) letter e) or f), if such deliveries are performed by a taxable person who is not established in Romania or not considered to be established in Romania for the supplies of services in question made in Romania according to the provisions under art. 125¹ par. (2), even if such person is registered for VAT in Romania according to art. 153 par. (4) or (5).

(4) Value-added tax is owed by the taxable person or non-taxable legal person registered for VAT according to art. 153 or 153¹ who is the beneficiary of a subsequent delivery performed within a triangular operation, under the following condition:

1. the reseller-purchaser of the goods is not established in Romania, he/she is registered for VAT in another Member State and performed an intra-Community acquisition of the goods in question in Romania, and such acquisition is not taxable as per art. 126 par. (8) letter b); and

2. the goods corresponding to the intra-Community acquisition provided under point 1 were transported by the supplier or reseller-purchaser or by another person on account of the supplier or reseller-purchaser directly by the beneficiary of the delivery from a Member State different than the one in which the reseller-purchaser is registered for VAT; and

3. the reseller-purchaser appoints the beneficiary of the delivery as payer of value-added tax for the delivery in question.

(5) Value-added tax is owed by the person due to whom the goods exit the regimes or situations provided under art. 144 par. (1) letter a) and d).

(6) In other situations than those provided under par. (2) – (5), if the delivery of goods/supply of services is performed by a taxable person who is not established in Romania or not considered to be established in Romania for the deliveries of goods/supplies of services in question according to the provisions under art. 125¹ par. (2) and who is not registered in Romania according to art. 153, the payer of value-added tax is the taxable person or the non-taxable legal person established in Romania or not established in Romania but registered in Romania according to art. 153 who is the beneficiary of deliveries of goods/supplies of services which take place in Romania as per art. 132 or 133.

(7) By way of exception from the provisions under par. (1):

a) when the payer of value-added tax as per par. (1) is a taxable person established within the Community but not in Romania, the person in question may appoint a fiscal representative to be the payer of value-added tax, under the conditions provided by norms;

b) when the payer of value-added tax as per art. (1) is a taxable person not established within the Community, the person in question is bound to appoint a fiscal

representative to be the payer of value-added tax, under the conditions provided by norms.

ART. 151

Payer of value-added tax for intra-Community acquisitions

(1) The person who performs an intra-Community acquisition of goods which is taxable as per the present title is bound to pay value-added tax

(2) When the person bound as per par. (1) to pay value-added tax for the intra-Community acquisition is:

a) a taxable person established within the Community but not in Romania, the person in question may appoint a fiscal representative to be the payer of value-added tax, under the conditions provided by norms;

b) a taxable person not established within the Community, the person in question is bound to appoint a fiscal representative to be the payer of value-added tax, under the conditions provided by norms.

ART. 151¹

Payer of value-added tax for the import of goods

The payer of value-added tax for import of goods subject to taxation as per the present title is the importer.

ART. 151²

Individual and joint liability for payment of value-added tax

(1) The beneficiary is held liable individually and jointly for payment of value-added tax when the payer of value-added tax is the supplier or provider as per art. 150 par.

(1) if the invoice provided by art. 155 par. (5):

a) is not issued;

b) comprises incorrect/incomplete data with respect to one of the following information: name, address, VAT identification number of the contracting parties, name or quantity of the goods delivered or services supplied, the elements necessary to calculate the base of taxation;

c) does not provide the value of the tax or provides it incorrectly.

(2) By way of derogation from the provisions under par. (1), if the beneficiary proves the payment of the value-added tax to the person bound to pay such tax, he/she shall no longer be individually and jointly held liable for payment of the tax.

(3) The supplier or provider is held liable individually and jointly for payment of value-added tax if the payer of the tax is the beneficiary according to art. 150 par. (2) – (4) and (6) and the invoice provided under art. 155 par. (5) or the auto-invoice provided under art. 155¹ par. (1):

a) is not issued;

b) comprises incorrect/incomplete data with respect to one of the following details: name, address, VAT identification number of the contracting parties, name or quantity of the goods delivered or services supplied, the elements necessary to calculate the base of taxation.

(4) The supplier is held liable individually and jointly for payment of value-added tax if the payer of the tax for an intra-Community acquisition of goods is the beneficiary

according to art. 151 and the invoice provided under art. 155 par. (5) or the auto-invoice provided under art. 155¹ par. (1):

a) is not issued;

b) comprises incorrect/incomplete data with respect to one of the following information: name, address, VAT identification number of the contracting parties, name or quantity of the goods delivered or services supplied, the elements necessary to calculate the base of taxation.

(5) The person who represents the importer, the person who submits the customs declaration of import or the import declaration for VAT and excises and the owner of the goods are held liable individually and jointly for payment of value-added tax, together with the importer provided under art. 151¹.

(6) For the application of the warehouse regime for value-added tax provided by art. 144 par. (1) letter a) point 8, the warehouse-keeper or the person responsible for transportation are held liable individually and jointly for payment of value-added tax, together with the person bound to pay such tax according to art. 150 par. (1), (5) and (6) and art. 151¹.

(7) The person who appoints another person as fiscal representative thereof as per art. 150 par. (7) and/or art. 151 par. (2) is held liable individually and jointly for payment of value-added tax with his/her fiscal representative.

CHAPTER XII **Special regimes**

ART. 152

Special exemption regime for small enterprises

(1) Taxable persons established in Romania as per art. 125¹ par. (2) letter a) who declare or realize an annual turnover lower than the ceiling of EUR 35,000, the equivalent in Lei of which is to be established at the exchange rate communicated by the National Bank of Romania on accession date and rounded off to the following thousand, may apply the exemption of value-added tax, hereinafter referred to as *special exemption regime*, for the operations provided under art. 126 par. (1), with the exception of intra-Community deliveries of new means of transport which are exempt as per art. 143 par. (2) letter b).

(2) The turnover used as reference for the application of par. (1) is made up of the total value, exclusive of the tax in the situation provided under par. (7) and (7¹), of deliveries of goods and supplies of services carried out by the taxable person during one calendar year, which are taxable or, as applicable, would be taxable if they were not carried out by a small enterprise; of operations resulting from economic activities for which the place of delivery/supply is considered to be abroad, if the tax were deductible had such operations been performed in Romania as per art. 145 par. (2) letter b); of exempt operations without right of deduction provided by art. 141 par. (2) letters a), b), e) and f) if such operations are not ancillary to the main activity, with the exception of the following:

a) deliveries of tangible or intangible fixed assets, such as they are defined under art. 125¹ par. (1) point 3, performed by the taxable person;

b) intra-Community deliveries of new means of transport, exempt as per art. 143 par. (2) letter b).

(3) The taxable person who fulfills the requirements provided under par. (1) for application of the special exemption regime may opt at any point in time for application of the normal tax regime.

(4) A newly established taxable person may benefit from application of the special exemption regime if at the time it starts his/her economic activity he/she declares an annual estimated turnover according to par. (2) which is lower than the exemption ceiling and does not opt for the application of the normal tax regime as per par. (3).

(5) For the taxable person newly set up who starts an economic activity during a calendar year, the exemption ceiling provided under par. (1) is determined pro rata with the period left from the establishment and until the end of the year; for purposes of the aforesaid calculation, the fraction of month is considered a whole month.

(6) The taxable person who applies the special exemption regime and whose turnover as provided under par. (2) is higher than or equal to the exemption ceiling provided under par. (1) or, as applicable, under par. (5), must request registration for VAT as per art. 153 within 10 days as of the date when he/she reaches or exceeds the ceiling. The date when he/she reaches or exceeds the ceiling is considered to be the first date of the calendar month following the month in which the ceiling was reached or exceeded. The special exemption regime applies until the date of registration for VAT as per art. 153. If the taxable person in question does not request such registration or requests it with delay, the competent fiscal bodies are entitled to establish liabilities related to the value-added tax to be paid and corresponding accessories thereof, as of the date the taxable person should have been registered for VAT as per art. 153.

(7) The taxable person registered for VAT as per art. 153 that does not exceed the exemption ceiling provided under par. (1) or, as applicable, the ceiling determined as per par. (5), during the previous calendar year may request to be withdrawn from the records of persons registered for VAT as per art. 153 in order to apply the special exemption regime, on condition that on the date of such request he/she did not exceed the exemption ceiling for the current year calculated pro rata with the period lapsed from the beginning of the year; for purposes of the aforesaid calculation, the fraction of month is considered a whole month. The request can be submitted with the competent fiscal bodies between the 1st and 10th day of each month following the fiscal period applied by the taxable person in accordance with the provisions of art. 156¹. The cancellation shall be valid as of the date of communication of the decision regarding the cancellation of the registration for VAT. The competent fiscal bodies are bound to settle the requests of withdrawal from the records of persons registered for VAT at the latest by the end of the month in which the requests were submitted. The taxable person shall have all rights and obligations of persons registered for VAT as per art. 153 until the date of communication of the decision of cancellation of such registration. The taxable person who requested to be withdrawn from the records is bound to submit the last VAT declaration as provided under 156² no matter the fiscal period applied as per art. 156¹, until the 25th of the month following the one in which the decision of cancellation of the VAT registration is communicated. The last declaration must provide the value resulting after the performance of all value-added tax adjustments as per the present title. By way of exception, the taxable persons who request to be withdrawn from the records of persons registered for VAT during the year 2012 as per the present paragraph shall not be bound to perform the tax adjustments for such withdrawal for the goods/services acquired on or before September 30, 2011.

(7¹) If after being withdrawn from the records of persons registered for VAT as per art. 153 based on par. (7) the taxable person realizes during one calendar year a turnover determined as per par. (2) which is higher than or equal to the exemption ceiling provided under par. (1), such taxable person shall be bound to observe the provisions of the present article and, after registration for value-added tax as per art. 153, he/she shall be entitled to perform the value-added tax adjustments as per the present title. The adjustments shall be reflected in the first value-added tax declaration submitted after registration for VAT according to art. 153 of the taxable person or, as applicable, in a subsequent declaration.

(7²) The taxable person who requests as per par. (7) to be withdrawn from the records of persons registered for VAT as per art. 153 but is bound to register for value-added tax according to art. 153¹, must request to be registered for VAT according to art. 153¹ at the same time with the request for withdrawal from the records of persons registered for VAT as per art. 153. The registration for VAT as per art. 153¹ shall be valid as of the date of cancellation of the registration for VAT as per art. 153. The provisions of the present paragraph are also applicable in the case in which the taxable person opts for registration for VAT as per art. 153¹ at the same time with the request for withdrawal from the records of persons registered for VAT as per art. 153.

(8) The taxable person who applies the special exemption regime:

a) is not entitled to deduct the tax corresponding to acquisitions as per art. 145 and 146;

b) is not entitled to mention the value-added tax on the invoice or on another document.

c) *** Repealed

(9) The registration rules and the adjustments that have to be performed in case of change of the value-added tax regime shall be established through norms.

ART. 152¹

Special regime for travel agencies

(1) For purpose of application of the present article, *travel agency* means any person who, acting in his/her own name or as agent, intermediates, offers information or undertakes to supply to persons travelling individually or in groups travel services, including accommodation in hotels, guest houses, dormitories, holiday homes and other spaces used for accommodation purposes, transport by air, road or sea, organized trips and other travel services. Travel agencies also include tour operators.

(2) If a travel agency acts in its own name for the direct benefit of the traveler and uses deliveries of goods and supplies of services performed by other persons, all the operations carried out by the travel agency with respect to the travel are considered to be a single service supplied by the agency for the traveler's benefit.

(3) The single service provided under par. (2) has the place of supply in Romania if the travel agency is established or has a fixed seat in Romania and the service is supplied through such seat from Romania.

(4) The base of taxation of the single service provided under par. (2) is made up from the profit margin, exclusive of the value-added tax, which is determined as a difference between the total amount to be paid by the traveler, less the value-added tax, and the costs of the travel agency, inclusive of the value-added tax, corresponding to the deliveries of goods and supplies of services for the direct

benefit of the traveler, if such deliveries of goods and supplies of services are carried out by other taxable persons.

(5) If the deliveries of goods and supplies of services performed for the direct benefit of the client are carried out outside the Community, the single service of the travel agency is considered to be the service provided by an agent and it is exempt of tax. In case the deliveries of goods and supplies of services performed for the direct benefit of the client are carried out both within and outside the Community, it shall be considered exempt from value-added tax only the part of the single service supplied by the travel agency which corresponds to the operations carried out outside the Community.

(6) Without prejudice to the provisions under art. 145 par. (2), the travel agency is not entitled to deduction or reimbursement of the value-added tax invoiced by the taxable persons for the deliveries of goods and supplies of services for the direct benefit of the traveler and used by the travel agency for the supply of the single service provided under par. (2).

(7) The travel agency may also opt for the application of the normal value-added tax regime for the operations provided under par. (2), with the following exceptions for which taxation under the special regime is mandatory:

a) when the traveler is a physical person;

b) if the travel services also comprise components for which the place of the operation is considered to be outside Romania.

(8) The travel agency must keep any other records necessary for establishment of the tax owed as per the present article, apart from those which must be kept according to the present title.

(9) Travel agencies are not entitled to register the value-added tax in a distinct manner on the invoices or other legal documents which are given to the traveler for the single services to which the special regime applies.

(10) When the travel agency performs both operations subject to the normal taxation regime and operations subject to the special regime, it must keep separate accounting records for each type of operation.

(11) The special regime provided by the present article does not apply for travel agencies that act as agent and for which the provisions under art. 137 par. (3) letter e) are applicable with respect to the base of taxation.

ART. 152²

Special regimes for second-hand goods, works of art, collectors' items and antiques

(1) For purposes of the present article:

a) works of art represent:

1. paintings, collages and similar decorative plates, drawings and pastels executed entirely by hand, other than original architectural, engineering and other industrial, commercial, topographic or similar plans and drawings executed by hand, manuscripts, photographic reproductions on sensitized paper and carbon copies of the plans, and of drawings or texts listed above and manually decorated industrial items (C.N. code 9701);

2. engravings, prints and lithographs, either old originals or modern ones, impressed directly in black and white or in color, of one or several plates executed entirely by hand by the artist, irrespective of the process or material employed, but not including any mechanical or photomechanical processes (C.N. code 9702 00 00);

3. original statuary and sculptures, in any material, only if executed entirely by the artist; copies executed by another artist than the author of the original work (C.N. code 9703 00 00);

4. tapestries (C.N. tariff code 5805 00 00) and wall textiles (C.N. code 6304 00 00), made by hand from original designs provided by artists, provided that there are not more than 8 copies of each;

5. individual pieces of ceramics executed entirely by the artist and signed by him;

6. enamels on copper, executed entirely by hand, limited to eight numbered copies bearing the signature of the artist or the studio, excluding articles of jewelry in gold or silver;

7. photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts;

b) collectors' items represent:

1. postage or revenue stamps, postmarks, first-day covers, pre-stamped stationery and the like, franked, or if unfranked not being of legal tender and not being intended for use as legal tender (C.N. code 9704 00 00);

2. collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest (C.N. code 9705 00 00);

c) *antiques* are objects, other than works of art and collectors' items, which are more than 100 years old (C.N. code 9706 00 00);

d) second-hand goods are tangible movable goods which can be reused in the state they are or after the performance of repairs on them, other than works of art, collectors' items or antiques, precious stones and other goods provided by norms;

e) the reseller taxable person is the person who, during the performance of the economic activity thereof, acquires or imports second-hand goods and/or works of art, collectors' items or antiques for resale purposes, no matter if the person in question acts in his/her own name or on account of another within a fee based agreement upon sale or purchase;

f) the organizer of a public auction sale is the taxable person who, in carrying out the economic activity thereof, offers for sale goods through public auction, for purpose of adjudication thereof by the highest bidder;

g) *the profit margin* is the difference between the sale price applied by the reseller taxable person and the purchase price, where:

1. the sale price is the amount obtained by the reseller taxable person from the purchaser or from a third party, including the subsidies directly connected to this transaction, the taxes, liabilities, charges and other expenses, like commissions, packing, transport and insurance expenses, charged by the reseller taxable person to the purchaser, with the exception of price discounts;

2. the purchase price is the whole amount obtained as per the definition of the sale price by the supplier from the reseller taxable person;

h) the special regime means the special regulations provided by the present article for the taxation of deliveries of second-hand goods, works of art, collectors' items and antiques at the share of the profit margin.

(2) The reseller taxable person shall apply the special regime for deliveries of second-hand goods, works of art, collectors' items and antiques, other than works of art delivered by the authors or rightful successors thereof, for which the value-added tax must be collected, when such goods were acquired from within the Community and from one of the following suppliers:

a) a non-taxable person;

b) a taxable person to the extent the delivery performed by such taxable person is exempt from tax as per art. 141 par. (2) letter g);

c) a small enterprise, to the extent the acquisition in question refers to capital assets;

d) a reseller taxable person, to the extent the delivery performed by such person was subject to value-added tax under a special regime.

(3) Under the conditions established through norms the reseller taxable person may opt for the application of the special regime for the delivery of the following goods:

a) works of art, collectors' items or antiques he/she imported;

b) works of art acquired by the reseller taxable person from the authors thereof or from the rightful successors thereof, for which the value-added tax must be collected.

(4) In the case of the deliveries provided under par. (2) and (3) for which the option provided under par. (3) is exercised, the base of taxation is the profit margin determined according to par. (1) letter g), exclusive of the related value-added tax. By way of exception, for the deliveries of works of art, collectors' items or antiques imported directly by the reseller taxable person as per par. (3), the purchase price for the calculation of the profit margin is the base of taxation upon import established as per art. 139 plus the tax owed or paid upon import.

(5) Any deliveries of second-hand goods, works of art, collectors' items or antiques carried out under a special regime is exempt from value-added tax as per the provisions under art. 143 par. (1) letters a), b), h) – m) and o).

(6) The reseller taxable person is not entitled to deduct the value-added tax owed or paid for the goods provided under par. (2) and (3) if the delivery of such goods is subject to tax under a special regime.

(7) The reseller taxable person may apply the normal taxation regime for any eligible delivery for application of the special regime, including for deliveries of goods for which it can be opted for the application of the special regime provided under par. (3).

(8) If the reseller taxable person applies the normal taxation regime for the goods for which he/she could opt for the application of the special regime provided under par. (3), the person in question shall be entitled to deduct the tax owed or paid for:

a) the import of works of art, collectors' items or antiques;

b) works of art acquired from the authors thereof or the rightful successors thereof.

(9) The right of deduction provided under par. (8) arises on the date on which the collected value-added tax corresponding to the delivery for which the reseller taxable person opts for the normal taxation regime becomes chargeable.

(10) Taxable persons are not entitled to deduction of the value-added tax owed or paid for goods which have been or shall be acquired from the reseller taxable person, if the delivery thereof by the reseller taxable person is subject to the special regime.

(11) The special regime does not apply for:

a) the deliveries performed by a reseller taxable person for the goods acquired within the Community from persons who benefited from tax exemption as per art. 142 par. (1) letter a) and e) – g) and art. 143 par. (1) letter h) – m) upon purchase, upon the intra-Community acquisition or the import of such goods or who benefited from reimbursement of the value-added tax;

b) the intra-Community delivery by a reseller taxable person of new means of transport exempt from value-added tax as per art. 143 par. (2) letter b).

(12) The reseller taxable person is not entitled to record distinctly the value-added tax corresponding to deliveries of goods subject to the special regime on the invoices issued to the clients.

(13) Under the conditions established through norms, the reseller taxable person who applies the special regime must fulfill the following requirements:

- a) establish the value-added tax collected within the special regime for each fiscal period in which he/she has to submit the tax declaration as per art. 156¹ and 156²;
- b) keep records of the operations for which the special regime applies.

(14) Under the conditions established through norms, the reseller taxable person who carries out both operations subject to the normal value-added tax regime and to the special regime must fulfill the following requirements:

- a) keep separate records for the operations subject to each regime;
- b) establish the tax collected under the special regime for each fiscal period for which he/she must submit the value-added tax declaration as per art. 156¹ and 156².

(15) The provisions of par. (1) - (14) also apply to public auction sales carried out by reseller taxable persons who act as organizers of public auction sales under the conditions established through norms.

ART. 152³

Special regime for investments gold

(1) *Investment gold* means:

- a) gold, in the form of ingots or plates accepted/quoted on the market of precious metals, with a minimum purity of 995‰, represented through securities or not, except for ingots or plates with a weight of at most 1g;
- b) golden coins which fulfill the following conditions:
 - 1. have the title higher than or equal to 900‰;
 - 2. are remade after the year 1800;
 - 3. represent or represented the legal currency in their country of origin; and
 - 4. are normally sold for a price which does not exceed the market value of the gold contained in the coins by more than 80%;

(2) For purposes of the present article, the coins provided under par. (1) letter b) are not considered sold for numismatic purposes.

(3) The following operations are exempt from value-added tax:

- a) deliveries, intra-Community acquisitions and imports of investment gold, including investments in securities, for gold nominated or not nominated or negotiated in gold accounts, and comprising especially loans and exchanges with gold which confer a right of ownership or of claim over the investment gold, as well as operations related to investment gold and consisting of futures and forward term agreements which lead to a transfer of the right of ownership or of claim over the investment gold;
- b) intermediation services for delivery of investment gold supplied by agents acting in the name and on account of a principal.

(4) The taxable person who produces the investment gold or transforms any gold into investment gold may opt for the normal value-added tax regime for deliveries of investment gold to another taxable person that would be normally exempt as per the provisions under par. (3) letter a).

(5) The taxable person who currently delivers gold for industrial purposes may opt for the normal value-added tax regime for deliveries of investment gold provided under par. (1) letter a) to any another taxable person that would be normally exempt as per the provisions under par. (3) letter a).

(6) The agent who supplies intermediation services within deliveries of gold in the name and on account of a principal may opt for taxation if the principal exercised the option provided under par. (4).

(7) The options provided under par. (4) – (6) are to be exercised through a notice sent to the competent fiscal body. The option enters into force on the date of registration of such notice with the fiscal bodies or on the date of submission thereof to the post office with confirmation of receipt, as applicable, and is to apply to all deliveries of investment gold performed as of the date in question. In the case of the option exercised by an agent, the option applies for all the intermediation services supplied by the agent in question for the benefit of the same principal who exercised the option provided under par. (5). In case of exercise of the options provided under par. (4) – (6), the taxable persons cannot return to the special regime.

(8) In case the delivery of investments gold is exempt from tax as per the present article, the taxable person shall be entitled to deduct:

a) the tax owed or paid for the acquisitions of investments gold performed from a person who exercised his/her taxation option;

b) the tax owed or paid for the intra-Community acquisitions or the import of gold which is subsequently transformed into investments gold, performed by the taxable person or a third party on account of the taxable person;

c) the tax owed or paid for the services supplied in his/her benefit and consisting of the change of form, weight or purity of the gold, including of the investments gold.

(9) The taxable person who produces investments gold or transforms gold into investments gold shall be entitled to deduction of the tax owed or paid for acquisitions related to the production or transformation of the gold in question.

(10) For deliveries of alloys or semis of gold with a title higher than or equal to 325‰, as well as for deliveries of investments gold performed by taxable persons who exercised their taxation option to purchasers who are taxable persons, the purchaser shall be the payer of the value-added tax as per the norms.

(11) The taxable person who sells investments gold shall keep records of all transactions involving investments gold and shall preserve the documentation allowing the identification of the client in such transactions. These records shall be kept for at least 5 years as of the end of the year in which the operations were carried out.

ART. 152⁴

Special regime for non-established taxable persons who supply electronic services to non-taxable persons

(1) For purposes of the present article:

a) *non-established taxable person* means the taxable person who does not have a fixed seat, nor is he/she established in the Community, and who is required for other reasons to register in the Community for VAT and who supplies electronic services to non-taxable persons established in the Community;

b) *Member State of registration* means the Member State chosen by the non-established taxable person for declaration of the start of activity thereof as taxable person on Community territory as per the present article;

c) *Member State of consumption* means the Member State in which the electronic services are supplied as per art. 56 par. (1) letter k) in Directive 112, in which the beneficiary acting as taxable person within an economic activity is established, has his/her domicile or usual residence.

(2) The non-established taxable person who supplies electronic services, such as these are defined under art. 125¹ par. (1) point 26, to non-taxable persons established in the Community or who have their domicile or usual residence in a

Member State, may use a special regime for all the electronic services supplied in the Community. The special regime allows, *inter alia*, the registration of a non-established taxable person in a single Member State, according to the present article, for all the electronic services supplied in the Community to non-taxable persons established in the Community.

(3) If a non-established taxable person opts for the special regime and chooses Romania as Member State of registration, on the date of starting the taxable operations the person in question must submit an electronic declaration of starting the activity to the competent fiscal body. The declaration must contain the following information: name of the taxable person, postal address, e-mail addresses, including his/her own webpage, the national fiscal registration code, as applicable, as well as a statement confirming that the person is not registered for VAT within the Community. The subsequent amendments of the details in the declaration of registration must be notified to the competent fiscal body by electronic means.

(4) Upon receipt of the declaration of starting the activity, the competent fiscal body shall register the non-established person with a special VAT identification number and shall communicate to the person in question such number by electronic means. For purposes of registration the appointment of a fiscal representative is not necessary.

(5) The non-established taxable person must notify the competent fiscal body by electronic means in case he/she ceases his/her activity or about subsequent changes that exclude such person from the special regime.

(6) The non-established taxable person shall be withdrawn from the records by the competent fiscal body if one of the following requirements is fulfilled:

- a) the taxable person informs the fiscal body that he/she no longer supplies electronic services;
- b) the competent fiscal body ascertains that the taxable operations of the taxable person have ended;
- c) the taxable person no longer fulfills the requirements in order to be allowed to use the special regime;
- d) the taxable person repeatedly breaches the rules of the special regime.

(7) Within a term of 20 days as of the end of each calendar quarter, the non-established taxable person must submit by electronic means to the competent fiscal body a special tax declaration, as per the template established by the Ministry of Public Finance, no matter if electronic services were supplied or not during the fiscal period of reporting.

(8) The special tax declaration must contain the following information:

- a) the identification code provided under par. (4);
- b) the total value exclusive of the value-added tax of the electronic services supplies for the fiscal period of reporting, the applicable rates of value-added tax and the corresponding value of the tax owed to each Member State of consumption in which the tax is chargeable;
- c) the total value of the tax owed in the Community.

(9) The especial tax declaration shall be drawn up in Lei. If the supplies of services were performed in other currencies the exchange rate in force on the last day of the fiscal period of reporting is to be used when filling in the declaration. The exchange rates used are those published by the Central European Bank for the day in question or the subsequent day if not published on that day.

(10) The non-established taxable person must pay the total amount of tax owed to the Community in a special account in Lei opened with the treasury and indicated by

the competent fiscal body until the date on which he/she is bound to submit the special declaration. The procedure of transfer of the amounts owed to each Member State for the electronic services supplied on its territory by the non-established taxable person registered in Romania for VAT shall be established through norms.

(11) The non-established taxable person must keep sufficiently detailed records of the services for which this special regime is applied in order to allow the competent fiscal bodies in the Member States of consumption to determine whether the declaration provided under par. (7) is correct. These records shall be made available in electronic form, upon request of the competent fiscal body and of the Member States of consumption. The non-established taxable person shall keep these records for a term of 10 years as of the end of the year in which the services were supplied.

(12) The non-established taxable person who uses the special regime does not exercise the right of deduction through the special tax declaration as per art. 147¹, but he/she can exercise such right through reimbursement of the value-added tax paid, in accordance with the provisions under art. 147² par. (1) letter b), even if a taxable person established in Romania would not be entitled to a similar compensation with respect to value-added tax or a similar tax, as provided by the laws of the country where the seat of such non-established taxable person is located.

CHAPTER XIII

Obligations

ART. 153

Registration of payers of value-added tax

(1) The taxable person whose seat of the economic activity is in Romania and who carries out or intends to carry out an economic activity which implies taxable operations and/or operations exempt from value-added tax with right of deduction must request to the competent fiscal body to be registered as payer of VAT, hereinafter referred to as normal VAT registration, as follows:

a) before carrying out such operations, in the cases below:

1. if the person declares that he/she will realize a turnover that reaches or exceeds the exemption ceiling provided under art. 152 par. (1) with respect to the special exemption regime for small enterprises;

2. if the person declares that he/she will realize a turnover lower than the exemption ceiling provided under art. 152 par. (1) but opts for the application of the normal value-added tax regime;

b) if during a calendar year the person reaches or exceeds the exemption ceiling provided under art. 152 par. (1), within 10 days as of the end of the month in which such ceiling was reached or exceeded;

c) if the turnover realized during one calendar year is lower than the exemption ceiling provided under art. 152 par. (1) but the person opts for the application of the normal value-added tax regime;

d) if the person performs operations which are exempt from value-added tax and opts for the taxation thereof, as per art. 141 par. (3).

(2) The taxable person whose seat of the economic activity is outside Romania, but who is established in Romania through a fixed seat, as per art. 125¹ par. (2) letter b), shall be bound to request registration as payer of VAT in Romania, as follows:

a) before receipt of the services, if he/she is about to receive for the fixed seat in Romania services for which he/she is bound to pay value-added tax in Romania as

per art. 150 par. (2), if the services in question are supplied by a taxable person who is established in another Member State for purposes of art. 125¹ par. (2);

b) before the supply of the services, if he/she is about to supply the services provided under art. 133 par. (2) from the fixed seat in Romania to a beneficiary who is a taxable person established in another Member State for purposes of art. 125¹ par. (2) and who is bound to pay VAT in another Member State as per the legislation of that Member State which is equivalent to art. 150 par. (2) herein;

c) before the performance of economic activities at that fixed seat under the conditions established by art. 125¹ par. (2) letter b) and c) which implies:

1. deliveries of taxable goods and/or of exempt goods with right of deduction, including intra-Community deliveries exempt of VAT as per art. 143 par. (2);

2. supplies of taxable services and/or of services exempt from value-added tax with right of deduction, other than those provided under letter a) and b);

3. operations which are exempt from value-added tax, but for which he/she opts for taxation as per art. 141 par. (3);

4. intra-Community acquisitions of taxable goods.

(3) The provisions under par. (1) are not applicable to the person who is treated as a taxable person only because he/she occasionally performs intra-Community acquisitions of new means of transport.

(4) A taxable person not established in Romania as per art. 125¹ par. (2) or registered as value-added tax payer in Romania as per art. 153 shall request to be registered as value-added tax payer with the competent fiscal bodies for operations carried out in Romania which give a right of deduction of value-added tax, other than transport services or services ancillary to transport which are exempt according to art. 143 par. (1) letter c) – m), art. 144 par. (1) letter c) and art. 144¹, before the performance of those operations, with the exception of the situations in which the person bound to pay value-added tax is the beneficiary as per art. 150 par. (2) – (6). The persons established outside the European Community who carry out supplies of electronic services to non-taxable persons from Romania and who are registered in another Member state as per the special regime for electronic services for all the electronic services provided within the European Community shall not be bound to register as payer of value-added tax in Romania according to the provisions of the present title. The taxable person not established in Romania as per art. 125¹ par. (2) or registered as payer of value-added tax in Romania as per art. 153 may request to be registered as payer of value-added tax if he/she carries out in Romania any of the following operations:

a) imports of goods;

b) operations provided under art. 141 par. (2) letter e), if he/she opts for the taxation thereof as per art. 141 par. (3);

c) operations provided under art. 141 par. (2) letter f), if these operations are taxable by operation of law or by option, as per art. 141 par. (3).

(5) The person not established in Romania and not registered as payer of value-added tax in Romania shall request to be registered as payer of value-added tax as per the present article before performing any of the operations below:

a) an intra-Community acquisition of goods for which he/she is bound to pay value-added tax as per art. 151; or

b) an intra-Community delivery of goods exempt from value-added tax.

(6) Under the conditions established through norms, any taxable person established in the Community but not in Romania who is bound to register as payer of value-added tax in Romania may fulfill this obligation by appointing a fiscal representative

in this respect. Under the conditions established through norms, any taxable person not established in the Community who is bound to register as payer of value-added tax in Romania is bound to register by appointing a fiscal representative in this respect.

(7) The competent fiscal bodies will register as payers of value-added tax as per the present article all the persons who, according to the provisions of the present title, are bound to request such registration in accordance with par. (1), (2), (4) or (5).

(7¹) Through order of the minister of public finance criteria can be established conditioning the registration as payer of value-added tax of the trading companies the seat of the economic activity of which is in Romania and which are established pursuant to Law no. 31/1990 on trading companies, republished, as subsequently amended and supplemented, and are bound to register with the trade register. Based on the aforementioned criteria, the competent fiscal bodies shall establish if the taxable person justifies its intention and has the capacity to carry out the economic activity in question in order to register it as payer of value-added tax. By way of exception from the provisions of par. (7), the competent fiscal bodies shall not register as payers of value-added tax the taxable persons that do not fulfill the criteria established through order of the minister of public finance.

(8) If a person is bound to register as payer of value-added tax as per the provisions under par. (1) letter b), par. (2), (4) or (5) and does not request such registration, the competent fiscal bodies shall register the person in question *ex officio*.

(9) The competent fiscal bodies shall cancel the registration of a payer of value-added tax as per the present article:

a) if such person is declared inactive as per the provisions of art. 78¹ in Government Ordinance no. 92/2003, republished, as subsequently amended and supplemented, as of the date it is declared inactive;

b) if such person became temporarily inactive and is registered as such with the trade register as per the legal provisions, as of the date of registration of the mention related to temporary inactivity with the trade register;

c) if the shareholders of the taxable person or the taxable person itself are registered in their fiscal record with crimes and/or the deeds provided by art. 2 par. (2) letter a) in Government Ordinance no. 75/2001 on the organization and operation of the fiscal record, republished, as subsequently amended and supplemented, as of the date of communication of the cancellation decision by the competent fiscal bodies;

d) if such person submitted no value-added tax declaration as provided by art. 156² during a calendar quarter but it is not in the situations provided by letter a) or b) above, as of the first day of the second month following the calendar quarter in question. These provisions apply only in the case of the persons that have as fiscal period either a month or a quarter;

e) if the value-added tax declarations submitted for 6 consecutive months during one calendar quarter for the persons for which the fiscal period is the calendar month, and for two consecutive fiscal periods during one calendar quarter for the taxable persons for which the fiscal period is the calendar quarter, do not provide any acquisitions of goods/services or any deliveries of goods/supplies of services carried out during the aforementioned reporting periods, as of the first day of the second month following the calendar quarter in question;

f) if, according to the provisions of the present title, the person was not bound to request registration as payer of value-added tax or was not entitled to request registration as payer of value-added tax as per the present article;

g) in the situation provided under art. 152 par. (7).

For the situations provided under letter a) – e), the cancellation of the registration as payer of value-added tax of the taxable person is performed by the competent fiscal bodies *ex officio*. For the situation provided under letter f), the cancellation of the registration as payer of value-added tax is performed upon request of the taxable person or *ex officio* by the competent fiscal bodies, as applicable. For the situation provided under letter g), the cancellation of the registration as payer of value-added tax is performed upon request of the taxable person.

(9¹) The procedure of cancellation of the registration as payer of value-added tax is established through the procedural norms in force. After the cancellation of the registration as payer of value-added tax as per par. (9) letter a) – e), the competent fiscal bodies shall register the taxable persons as payers of value-added tax as follows:

a) *ex officio*, as of the date on which the situation leading to the cancellation of registration ceased, for the situations provided under par. (9) letters a) and b);
b) at the request of the taxable person, in the situation provided under par. (9) letter c), if the situation which led to the cancellation ceases, as of the date of communication of the decision of registration as payer of value-added tax;
c) at the request of the taxable person, in the situation provided under par. (9) letter d), as of the date of communication of the decision of registration as payer of value-added tax, based on the following information/documents supplied by the taxable person:

1. the value-added tax declarations that were not submitted within the due term;
2. a motivated request providing that the person in question undertakes to submit the value-added tax declarations within the terms provided by law;

After the first default provided under par. (9) letter d) the taxable persons shall be registered as payers of value-added tax if they fulfill all the conditions provided by law, and only after the lapse of 3 months as of the cancellation of registration. If the default is repeated after the second registration of the taxable person, the fiscal bodies shall annul the VAT identification number of the person in question and shall not approve any possible subsequent requests thereof for registration as payer of value-added tax.

d) in the situation provided under par. (9) letter a), at the request of the taxable person and based on a statement thereof on one's own responsibility that provides that he/she shall carry out economic activities at the latest during the month following the one in which he/she requested registration as payer of value-added tax. The date of registration as payer of value-added tax of said taxable person is the date of communication of the decision of registration as payer of value-added tax. If the taxable person fails to submit a request for registration as payer of value-added tax within a term of maximum 180 days as of cancellation date, the fiscal bodies shall not approve the possible subsequent requests thereof for registration as payer of value-added tax.

The taxable persons who are in any of the situations provided by the present paragraph may not apply the provisions regarding the exemption ceiling for small enterprises provided under art. 152 before the date of registration as payer of value-added tax and are bound to apply the provisions under art. 11 par. (1¹) and (1³).

(9²) The National Agency of Fiscal Administration organizes the Register of taxable persons registered as payers of value-added tax as per art. 153 and the Register of taxable persons whose registration as payer of value-added tax as per art. 153 was cancelled. These registers are public and are displayed on the website of the National Agency for Fiscal Administration. The registration in the Register of taxable

persons whose registration as payer of value-added tax as per art. 153 was cancelled is made by the competent fiscal body after communication of the decision of cancellation of the registration as payer of value-added tax, within at most 3 days as of communication.

(10) The person registered as per the present article shall inform in writing the competent fiscal bodies with respect to amendments brought to any information provided in the request for registration or supplied through any other method to the competent fiscal body with respect to such registration or which is provided in the registration certificate, within 15 days as of the date of occurrence of any such amendment.

(11) In case he/she ceases to carry out operations with right of deduction of the value-added tax or in case he/she ceases the performance of his/her economic activity, any person registered as per the present article shall inform in writing the competent fiscal bodies within 15 days as of the occurrence of any such events in order to be removed from the records of payers of value-added tax. The date on which the aforementioned removal shall take place and the related applicable procedure shall be established through procedural norms.

ART. 153¹

Registration as payer of value-added tax of other persons who carry out intra-Community acquisitions or for services

(1) The following shall be bound to request registration as payer of value-added tax as per the present article:

a) the taxable persons whose seat of the economic activity is in Romania and the non-taxable legal persons established in Romania who are not registered and are not bound to be registered as per art. 153 and who are not already registered according to letter b) or c) or par. (2), if they perform an intra-Community acquisition taxable in Romania, and if the value of the intra-Community acquisition in question exceeds the ceiling for intra-Community acquisitions in the calendar year in which it takes place; such persons must register before the performance of such acquisition;

b) the taxable persons whose seat of the economic activity is in Romania, who are not registered or bound to be registered according to art. 153 and who are not already registered according to letter a) or c) or par. (2), if they supply services which take place in another Member State for which the beneficiary is a payer of value-added tax according to the provision in the legislation of that Member State which are equivalent to those under art. 150 par. (2); such persons must register before the supply of the service;

c) the taxable persons whose seat of the economic activity is established in Romania, who are not registered or bound to be registered as per art. 153 and who are not already registered as per letter a) or b) or par. (2), if they receive from a supplier who is a taxable person established in another Member State services for which they are bound to pay value-added tax in Romania according to art. 150 par. (2); such persons must register before the receipt of those services.

(2) The taxable persons whose seat of the economic activity is established in Romania, who are not registered or bound to be registered as per art. 153, and the non-taxable legal persons established in Romania may request to be registered as per the present article if they perform intra-Community acquisitions according to art. 126 par. (6).

(3) The competent fiscal bodies shall register as payer of value-added tax as per the present article any person who requests such registration according to par. (1) or (2).

(4) If the person bound to register as payer of value-added tax according to par. (1) does not request such registration, the competent fiscal bodies shall register such person *ex officio*.

(5) Any person registered as payer of value-added tax as per par. (1) letter a) may request the cancellation of his/her registration at any point in time after expiry of the calendar year following the one of registration, if the value of the intra-Community acquisitions thereof did not exceed the relevant ceiling in the year in which he/she submits the request or in the previous calendar year and if he/she did not exercise the option as per par. (7).

(6) Any person registered as payer of value-added tax as per par. (2) may request the cancellation of his/her registration at any point in time after expiry of 2 calendar years after the year in which he/she opted for the registration, if the value of the intra-Community acquisitions thereof did not exceed the relevant ceiling in the year in which he/she submits the request or in the previous calendar year, and if he/she did not exercise the option as per par. (7).

(7) If after expiry of the calendar year provided under par. (5) or of the 2 calendar years provided under par. (6) following the one in which the registration was performed the taxable person carries out an intra-Community acquisition based on the VAT identification number obtained as per the present article, it shall be deemed that such person opted as per art. 126 par. (6), except if he/she exceeded the ceiling for intra-Community acquisition.

(8) Any person registered as per par. (1) letter b) and c) may request the cancellation of the registration thereof at any point in time after expiry of the calendar year in which he/she was registered, except if he/she must remain registered according to par. (5) – (7).

(9) The competent fiscal bodies shall cancel the registration of a payer of value-added tax as per the present article, either *ex officio* or upon request, as applicable, in the following situations:

a) the person in question is registered as payer of value-added tax according to par. 153; or

b) the person in question is entitled to cancel the registration as payer of value-added tax as per the present article and requests cancellation according to par. (5), (6) and (8); or

c) the person in question ceases his/her economic activity.

(10) The registration as payer of value-added tax as per the present article does not confer upon the taxable person the quality of person registered as payer of value-added tax under a normal regime, and the relevant VAT identification number is to be used only for intra-Community acquisitions or for the services provided under art. 133 par. (2) and received from taxable persons established in another Member State or supplied by taxable persons established in another Member State.

(11) The provisions under art. 153 par. (9) shall apply correspondingly for the payers of value-added tax registered as per the present article.

ART. 154

General provisions regarding registration

(1) The VAT identification number assigned according to art. 153 and 153¹ has the prefix “RO” according to the International Standard ISO 3166 - alpha 2.

(2) The cancellation of any person's registration as payer of value-added tax does not exonerate such person from the liability thereof as provided by the present title with respect to any action prior to the date of cancellation or from the obligation to request registration as payer of value-added tax under the conditions of the present title.

(3) The cases in which persons not established in Romania who are bound to pay value-added tax in Romania as per art. 150 par. (1) can be exempt from registration as payer of value-added tax in Romania shall be established through norms.

(4) The persons registered:

a) as per art. 153, shall communicate the VAT identification number to all suppliers/providers or clients thereof;

b) as per art. 153¹, shall communicate the VAT identification number:

1. to the supplier/provider when bound to pay value-added tax as per art. 150 par. (2) – (6) and art. 151;

2. to the beneficiary who is a taxable person from another Member State to whom they supply services for which such beneficiary is bound to pay value-added tax as per the provisions in the legislation of that Member State which are equivalent to those of art. 150 par. (2).

ART. 155

Invoicing

(1) Any taxable person who performs a delivery of goods or a supply of services other than a delivery/supply without right of deduction as per art. 141 par. (1) and (2) must issue an invoice to each beneficiary at the latest by the 15th day of the month following the one in which the generative event of the value-added tax occurs, with the exception of the case in which the invoice was already issued. Also, said taxable person must issue an invoice to each beneficiary for the amount of advances collected with respect to a delivery of goods or a supply of services, at the latest by the 15th day of the month following the one in which he/she collected said advances, with the exception of the case in which the invoice was already issued.

(2) Any person registered as per art. 153 must self-invoice within the term provided under par. (1) each delivery of goods or supply of services to oneself.

(3) Any taxable person shall issue an invoice within the term provided under par. (1) for each sale at a distance he/she carried out as per art. 132 par. (2).

(4) Any taxable person shall issue a self-invoice within the term provided under par. (1) for each transfer he/she performed in another Member State as per art. 128 par. (10) and for each intra-Community acquisition performed in Romania under the conditions established by art. 130¹ par. (2) letter a).

(5) The invoice must comprise the following information:

a) the number, with one or several series, which uniquely identifies the invoice;

b) the date of issuance thereof;

c) the date on which the goods were delivered/the services were supplied or the date on which an advance was collected, if such date is different than the date of issuance of the invoice;

d) the name, address and VAT identification number or, as applicable, the fiscal identification code of the taxable person who issues the invoice;

e) the name of the supplier/provider who is not established in Romania and who appointed a fiscal representative, as well as the name, address and VAT identification number as per art. 153 of said fiscal representative;

- f) the name and address of the beneficiary of the goods and services, as well as the VAT identification number or the fiscal identification code of the beneficiary, if that beneficiary is a taxable person or a non-taxable legal person;
 - g) the name of the beneficiary who is not established in Romania and who appointed a fiscal representative, as well as the name, address and identification number as per art. 153 of the fiscal representative;
 - h) the denomination and quantity of the goods delivered, the denomination of the services supplied, as well as the particularities provided under art. 125¹ par. (3) for the goods' definition, in case of intra-Community deliveries of new means of transport;
 - i) the base of taxation of the goods and services and, as applicable, of the advances invoiced, for each rate, exemption or non-taxable operation, the unit price exclusive of value-added tax, as well as the discounts, rebates, refunds and other price reductions;
 - j) a mention of the value-added tax rate applied and of the amount of collected tax expressed in Lei according to the value-added tax rates;
 - k) if value-added tax is not owed, a reference to the applicable provisions of the present title or of Directive 112 or any other mention which shows that the delivery of goods or the supply of services is subject to an exemption or to the procedure of reverse taxation;
 - l) if the special regime for travel agencies applies, a reference to art. 152¹ or to art. 306 in Directive 112 or any other reference which would indicate that the special regime was applied;
 - m) if one of the special regimes for second-hand goods, works of art, collectors' items and antiques applies, a reference to art. 152² or to art. 313, 326 or 333 in Directive 112 or any other reference which would indicate the fact that one of those regimes was applied;
 - n) a reference to other invoices or documents previously issued, when several documents or invoices are issued for the same operation.
- (6) It is not mandatory for the invoices to be sealed and signed.
- (7) By way of derogation from par. (1) and without prejudice to the provisions under par. (3), the taxable person is exempt from the obligation of issuance of the invoice for the following operations, except if the beneficiary requests such invoice:
- a) transportation of passengers with taxis, as well as transportation of passengers based on travel tickets or subscriptions;
 - b) deliveries of goods through retail stores and supplies of services to the public registered in documents without identification of the purchaser.
 - c) *** Repealed.
- (8) Through norms shall be established the conditions under which:
- a) a centralizing invoice can be drawn up for several separate deliveries of goods or supplies of services;
 - b) invoices can be issued by the purchaser or client in the name and on behalf of the supplier/provider;
 - c) invoices can be sent by electronic means;
 - d) invoices can be issued by a third party in the name and on behalf of the supplier/provider;
 - e) the invoices can be kept in a certain place.
- (9) By way of exception from the provisions under par. (5), simplified invoices can be drawn up in the cases established through norms. No matter the situation, the simplified invoices must contain at least the following information:

- a) the date of issuance;
- b) identification details of the taxable person who issued it;
- c) identification of the types of goods and services supplied;
- d) the amount of value-added tax to pay or the information necessary for calculation thereof.

(10) Any document or message that amends and refers specifically and without ambiguities to the initial invoice shall be treated as an invoice.

(11) Romania shall accept the documents or messages, either hard copy or electronic, as invoices if they fulfill the conditions provided by the present article.

(12) If packages containing several invoices are sent or made available to the same addressee by electronic means, the information which is common on the individual invoices can be mentioned only once, on condition it is accessible for each invoice.

ART. 155^A1

Other documents

(1) Taxable persons or non-taxable legal persons who are bound to pay value-added tax as per the provisions under art. 150 par. (2) - (4) and (6) and art. 151 must self-invoice the operations in question on or before the 15th day of the month following the one in which the generating event of the tax occurs, if the person in question does not have the invoice issued by the supplier/provider.

(2) Taxable persons or non-taxable legal persons who are bound to pay value-added tax as per the provisions under art. 150 par. (2) - (4) and (6), must self-invoice the advances paid in connection to the operations in question on or before the 15th day of the month following the one in which the advances were paid, if the person in question does not have the invoice issued by the supplier/provider, with the exception of the situation in which the generating event of the tax occurred in the same month for which situation the provisions under par. (1) shall be applicable.

(3) Upon receipt of the invoice related to the operations provided under par. (1) and (2), the taxable persons or non-taxable legal persons shall mention on the invoice a reference to self-invoicing and on the self-invoice a reference to the invoice.

(4) In the case of deliveries for testing purposes or for conformity checks, of stocks under a consignment regime or of stocks placed at the client's disposal, on the date of placement at disposal or of dispatch of the goods, the taxable person shall issue a document to the addressee of the goods with the following information:

- a) a sequential serial number and the date of issuance of the document;
- b) the names and addresses of the parties;
- c) the date of placement at disposal or of dispatch of the goods;
- d) the denomination and quantity of the goods.

(5) In the cases provided under par. (4) the taxable person must issue a document to the addressee of the goods at the moment of partial or total return of the goods by such addressee. This document must contain the information provided under par. (4), with the exception of the date of placement at disposal or of dispatch of the goods which is replaced by the date of receipt of the goods.

(6) For the operations mentioned under par. (4), the invoice shall be issued at the moment when the addressee becomes the owner of the goods and shall comprise a reference to the documents issued as per par. (4) and (5).

(7) The documents provided under par. (4) and (5) need not be issued if the taxable person carries out deliveries of goods under a consignment regime or deliveries goods for stocks placed at the client's disposal from Romania to another Member

State which does not apply simplification measures; in such a case, the transfer of goods must be self-invoiced as per art. 155 par. (4).

(8) If the taxable person who places the goods at disposal or dispatches them to the addressee is not established in Romania, such person shall not be bound to issue the documents provided under par. (4) and (5). In this case, the taxable person who is the addressee of the goods in Romania shall be the one to issue a document containing the information provided under par. (4), with the exception of the date of placement at disposal or of dispatch which shall be replaced by the date of receipt of the goods.

(9) The taxable person who receives the goods in Romania in the cases provided under par. (8) shall also issue a document at the time of the partial or total return of the goods. This document includes the information provided under par. (4), with the exception of the date of placement at disposal or of dispatch, which is replaced by the date on which the goods are returned. In addition, a reference shall be made on this document to the invoice received when the taxable person becomes owner of the goods or when it is considered that the goods were delivered to such person.

(9¹) In the case of the goods delivered under a consignment regime or for stocks placed at disposal of the client by a taxable person who is not established in Romania, the taxable person who is the addressee of the goods in Romania shall issue the documents provided under par. (8) and (9) only if simplification measures are applied.

(10) The partial or total transfer of assets provided under art. 128 par. (7) and art. 129 par. (7), shall be provided in a document drawn up by the parties involved in the operation and each such party shall receive a counterpart of said document. This document must contain the following information:

- a) a sequential serial number and the date of issuance of the document;
- b) the date of the transfer;
- c) the name, address and VAT identification number provided under art. 153 of both parties, as applicable;
- d) an exact description of the operation;
- e) the value of the transfer.

ART. 156

Records of taxable operations

(1) Taxable persons established in Romania must keep accurate and complete records of all the operations carried out within the performance of their economic activity.

(2) Payers of value-added tax for any operation or persons identified as payers of value-added tax as per the present title for purpose of performance of any operation must keep records for every operation regulated by the present title.

(3) Taxable persons and non-taxable legal persons must keep accurate and complete records of all intra-Community acquisitions.

(4) The records provided under par. (1) – (3) must be drawn up and kept so that they comprise the information, documents and accounts, including the register of non-transfers and the register of goods received from another Member State, in accordance with the provisions established through norms.

(5) In the case of joint-stock companies that are not taxable persons, the legal rights and obligations related to value-added tax belong to the shareholder who keeps the record of revenues and expenditures, as per the agreement concluded by the parties.

ART. 156¹

Fiscal period

(1) The fiscal period is the calendar month.

(2) By way of exception from the provisions under par. (1), the fiscal period is the calendar quarter for the taxable person who during the previous calendar year realized a turnover from taxable and/or exempt operations with right of deduction and/or non-taxable operations in Romania as per art. 132 and 133, but which grant a right of deduction according to art. 145 par. (2) letter b), which did not exceed the ceiling of EUR 100,000 the equivalent in Lei of which is calculated according to the norms, with the exception of the situation in which the taxable person carried out during the previous calendar year one or several intra-Community acquisitions of goods.

(3) Taxable persons who register during the year must declare, on occasion of the registration as per art. 153, the turnover they estimate to realize during the period left until the end of the calendar year. If the estimated turnover does not exceed the ceiling provided under par. (2), as recalculated according to the number of months left until the end of the calendar year, the taxable person shall submit quarterly declarations in the year of registration.

(4) Small enterprises which register as payers of value-added tax as per art. 153 during the year must declare on occasion of their registration the turnover they obtained, recalculated based on the activity corresponding to a whole calendar year. If this recalculated turnover exceeds the ceiling provided under par. (2), in the year in question the fiscal period shall be the calendar month as per par. (1). If this recalculated turnover does not exceed the ceiling provided under par. (2), taxable persons shall use the calendar quarter as fiscal period, with the exception of the situation in which they carried out one or several intra-Community acquisitions of goods during the calendar year in question before the registration thereof as payers of value-added tax as per art. 153.

(5) If the turnover actually obtained in the year of registration, as recalculated based on the activity corresponding to a whole calendar year, exceeds the ceiling provided under par. (2), in the following year the fiscal period shall be the calendar month, as per par. (1). If this actual turnover does not exceed the ceiling provided under par. (2), the taxable persons shall use the calendar quarter as fiscal period, with the exception of the situation in which they carried out during the previous calendar year one or several intra-Community acquisitions of goods.

(6) Taxable persons who, according to par. (2) and (5), are bound to submit quarterly declarations must submit to the competent fiscal bodies, or on before January 25th, a declaration of mentions which should include the turnover of the previous year, either obtained or recalculated, as applicable, and a mention about the fact that they did not carry out intra-Community acquisitions of goods during the previous year. The provisions of the present paragraph shall not apply to the taxable persons which, according to the provisions under art. 152 par. (7), request to be removed from the records of payers of value-added tax as per art. 153 so as apply the special exemption regime.

(6¹) By way of exception from the provisions under par. (2) – (6), for taxable persons that use the calendar quarter as fiscal period and carry out an intra-Community acquisition of goods taxable in Romania, the fiscal period becomes the calendar month as of:

a) the first month of a calendar quarter, if the chargeability of the value-added tax corresponding to the intra-Community acquisition of goods arises during this first month of the quarter in question;

b) the third month of the calendar quarter, if the chargeability of the value-added tax corresponding to the intra-Community acquisition of goods arises during the second month of the quarter in question. The first two months of the quarter in question will represent a distinct fiscal period for which the taxable person shall be bound to submit a value-added tax declaration as per art. 156² par. (1);

c) the first month of the following calendar quarter, if the chargeability of the tax corresponding to the intra-Community acquisition of goods arises in the third month of the calendar quarter.

(6²) Taxable persons who are bound as per par. (6¹) to change their fiscal period must submit a declaration of mentions to the competent fiscal body within at most 5 business days as of the end of the month in which the chargeability of the intra-Community acquisition which generates this obligation arises and shall use as fiscal period the calendar month for the current and subsequent year. If such persons do not carry out any intra-Community acquisition of goods during the following year, they shall return as per par. (1) to using the calendar quarter as fiscal period. In this respect they must submit the declaration of mentions provided under par. (6).

(7) The situations and conditions under which another fiscal period than the calendar month or calendar quarter can be used shall be established through norms provided it does not exceed one calendar year.

ART. 156²

Value-added tax declaration

(1) The persons registered as per art. 153 must submit to the competent fiscal bodies for each fiscal period a value-added tax declaration, on or before the 25th of the month following the one in which the fiscal period in question ends.

(2) The value-added tax declaration drawn up by the taxable persons registered as per art. 153 shall comprise the deductible tax for which the right of deduction arises during the fiscal period of reporting and, as applicable, the amount of tax for which the right of deduction is exercised, as per the provisions under art. 147¹ par. (2), the amount of collected tax whose chargeability arises during the fiscal period of reporting, as well as other information provided in the template established by the Ministry of Public Finance.

(3) The incorrect data provided in a value-added tax declaration can be corrected through the declaration of a subsequent fiscal period and shall be registered in the rows corresponding to regularizations.

ART. 156³

Special value-added tax declaration and other declarations

(1) The special value-added tax declaration is submitted to the competent fiscal bodies by the persons who are not registered and who are not bound to register as per art. 153, as follows:

a) for intra-Community acquisitions of taxable goods, other than those provided under letters b) and c), by the taxable persons registered as per art. 153¹;

b) for intra-Community acquisitions of new means of transport, by any person, no matter if such person is registered or not as per art. 153¹;

c) for intra-Community acquisitions of excisable products, by the taxable persons and non-taxable legal persons, no matter if they are registered or not as per art. 153^{^1};
d) for the operations and by the persons bound to pay value-added tax as per art. 150 par. (2) – (4) and (6);
e) for the operations and by the persons bound to pay value-added tax as per art. 150 par. (5), with the exception of the situation in which an import of goods or an intra-Community acquisition of goods takes place.

(2) The special value-added tax declaration must be drawn up according to the template established through order of the chairman of the National Agency of Fiscal Administration and shall be submitted on or before the 25th of the month following that in which the chargeability of the operations mentioned under par. (1) arises. The special value-added tax declaration must be submitted only for the periods in which the tax becomes chargeable. By way of exception, the persons who are not registered as payers of value-added tax as per art. 153, no matter if they are registered or not as per art. 153^{^1}, shall be bound to submit the special value-added tax declaration for the intra-Community acquisitions of new means of transport before the acquisition thereof but not later than the 25th of the month following that in which the value-added tax related to such acquisition becomes chargeable. Also, the persons registered as payers of value-added tax as per art. 153^{^1} and bound to pay value-added tax for intra-Community acquisitions of means of transport which are not considered to be new as per art. 125^{^1} par. (3), shall be bound to submit the special value-added tax declaration for those intra-Community acquisitions before the registration of the means of transport in Romania but not later than the 25th of the month following that in which the value-added tax related to such acquisition becomes chargeable.

(3) For purposes of application of par. (2) above the competent fiscal bodies who manage the persons provided under par. (1) letter b) and the persons who are not registered or bound to be registered as per art. 153, no matter if such persons are bound to register as per art. 153^{^1} or not, shall issue, for purposes of registration of the new means of transport, a certificate attesting the payment of the value-added tax the template of which shall be established through order of the National Agency for Fiscal Administration. In the case of intra-Community acquisitions of means of transport which are not new for purposes of art. 125^{^1} par. (3) carried out by payers of value-added tax registered as per art. 153^{^1}, the competent fiscal bodies shall issue for the registration of such means of transport a certificate attesting either the payment of the value-added tax in Romania or that such tax is not owed in Romania, as per the legal provisions.

(4) Taxable persons registered as payers of value-added tax as per art. 153 whose turnover as provided by art. 152 par. (2) realized at the end of one calendar year is lower than the amount of EUR 35,000 calculated at the exchange rate communicated by the National Bank of Romania on accession date and rounded off to the following thousand, must communicate the information below through a written notice addressed to the competent fiscal bodies they are registered with on or before February 25th of the following year:

a) the total amount of the deliveries of goods and supplies of services to payers of value-added tax registered as per art. 153, as well as the amount of such tax;
b) the total amount of the deliveries of goods and supplies of services to persons not registered as payers of value-added tax as per art. 153, as well as the related amount of tax.

(5) Taxable persons not registered as payers of value-added tax as per art. 153 whose turnover as provided by art. 152, but excluding the revenues obtained from the sale of tickets of international road transport of passengers, realized at the end of one calendar year is lower than the amount of EUR 35,000 calculated at the exchange rate communicated by the National Bank of Romania on accession date and rounded off to the next thousand must communicate the information below through a written notice addressed to the competent fiscal bodies they are registered with on or before February 25th of the following year:

a) the total amount of deliveries of goods and supplies of services to persons registered as payers of value-added tax as per art. 153;

b) the total amount of deliveries of goods and supplies of services to persons not registered as payers of value-added tax as per art. 153;

c) the total amount and the value-added tax corresponding to acquisitions from persons registered as payers of value-added tax as per art. 153;

d) the total amount of the acquisitions from persons not registered as payers of value-added tax as per art. 153.

(6) The taxable persons registered as payers of value-added tax as per art. 153 who supply services of international transportation must communicate through a written notice to the competent fiscal bodies, on or before February 25th of the following year, the total amount of revenues obtained from the sale of tickets from international road transportation of passengers with place of departure in Romania.

(7) Importers who hold a unique authorization for simplified customs procedures issued by another Member State or who carry out imports of goods in Romania from the VAT viewpoint for which they are not bound to submit customs declarations of import must present to the customs bodies a declaration of import for value-added tax and excises on the date when the tax becomes chargeable as per the provisions under art. 136.

(8) The taxable person who is the beneficiary of the transfer of assets provided under art. 128 par. (7) and who is not registered as payer of value-added tax as per art. 153 and shall not register as such following the transfer, must submit, on or before the 25th of the month following that in which the transfer takes place, a declaration regarding the amounts resulting from the adjustments of the value-added tax performed according to art. 128 par. (4), art. 148, 149 or 161.

(9) The taxable persons whose registration as payer of value-added tax was cancelled as per art. 153 par. (9) letter g) and who did not perform the tax adjustments provided by law in the last declaration submitted before their removal from the records of payers of value-added tax or performed incorrect adjustments, may submit a declaration regarding the amounts resulting from the adjustment of the value-added tax performed as per art. 128 par. (4), art. 148, 149 or 161 or regarding the correction of the adjustments performed. The taxable persons whose registration as payer of value-added tax was cancelled as per art. 153 par. (9) letter g) and who have to perform other adjustments of value-added tax according to the provisions in the norms shall submit, on or before the 25th of the month following that in which this obligation arises, a declaration regarding the amounts resulting from the adjustments of the value-added tax.

(10) The taxable persons whose VAT identification number was cancelled as per the provisions of art. 153 par. (9) letters a) – e) must submit a declaration regarding the collected tax which must be paid, as per the provisions under art. 11 par. (1[^]1) and (1[^]3), on or before the 25th of the month following that in which the chargeability arises for the tax, for deliveries of goods/supplies of services performed and/or for

acquisitions of goods and/or services with regard to which they are payers of value-added tax and which were carried out during the period for which they did not have a valid VAT identification number.

ART. 156⁴

Recapitulative declaration

(1) Taxable persons registered as payers of value-added tax as per art. 153 or 153¹ must draw up and submit to the competent fiscal bodies, or on before the 25th of the month following a calendar month, a recapitulative declaration in which they mention:

a) the intra-Community deliveries exempt from tax under the conditions provided by art. 143 par. (2) letters a) and d) for which the tax became chargeable in the calendar month in question;

b) the deliveries of goods performed within a triangular operation provided under art. 132¹ par. (5) carried out in the Member State of arrival of the goods and which are declared as intra-Community deliveries with T code for which the tax became chargeable in the calendar month in question;

c) the supplies of services provided under art. 133 par. (2) carried out for the benefit of taxable persons not established in Romania but established within the Community, other than those exempt from value-added tax in the Member State where they are taxable, and for which the tax became chargeable in the calendar month in question;

d) intra-Community acquisitions of taxable goods for which the tax became chargeable in the calendar month in question;

e) acquisitions of services provided under art. 133 par. (2) carried out by taxable persons in Romania who are bound to pay the value-added tax as per art. 150 par. (2) for which the tax became chargeable in the calendar month in question, and which were carried out from taxable persons not established in Romania, but established within the Community.

(2) The recapitulative declaration is drawn up according to the template established through order of the chairman of the National Agency for Fiscal Administration for each calendar month in which the value-added tax becomes chargeable for such operations.

(3) The recapitulative declaration comprises the following information:

a) the VAT identification number of the taxable person from Romania based on which such person carried out intra-Community deliveries of goods under the conditions provided by art. 143 par. (2) letter a), or supplied services under the conditions established at art. 133 par. (2), other than those exempt from VAT in the Member State where they are taxable, or carried out taxable intra-Community acquisitions of goods from another Member State or acquired the services provided by art. 133 par. (2), other than those exempt from value-added tax;

b) the VAT identification number of the person who acquires the goods or receives the services in another Member State than Romania, based on which the supplier or provider from Romania carried out for the benefit of such person an intra-Community delivery exempt from value-added tax as per art. 143 par. (2) letter a) or the supplies of services provided under art. 133 par. (2), other than those exempt from value-added tax;

c) the VAT identification number from another Member State assigned to the supplier/provider who carries out an intra-Community delivery/a supply of services as per the conditions provided under art. 133 par. (2) or, as applicable, only the code of the Member State from which the intra-Community delivery or the supply of services

takes place if the supplier/provider failed to fulfill the obligation thereof to register as payer of value-added tax in the state in question; this shall be valid for the persons from Romania who carry out taxable intra-Community acquisitions or acquire the services provided under art. 133 par. (2), other than those exempt from value-added tax;

d) the VAT identification number from Romania of the taxable person who carries out a transfer to another Member State and based on which he/she carried out such transfer, as per art. 143 par. (2) letter d), as well as the VAT identification number of the taxable person from the Member State in which the dispatch or transport of the goods ended;

e) the VAT identification number from the Member State where the dispatch or transport of the goods of the taxable person who performs in Romania a taxable intra-Community acquisition as per art. 130¹ par. (2) letter a) or, as applicable, only the code of the Member State in question, if the taxable person is not registered as payer of value-added tax in that Member State, as well as the VAT identification number from Romania of such person;

f) for intra-Community deliveries of goods exempt from value-added tax as per art. 143 par. (2) letter a) and for supplies of services provided under art. 133 par. (2), other than those exempt from value-added tax in the Member State in which they are taxable, the total value of the deliveries/supplies for each client;

g) for intra-Community deliveries of goods consisting of transfers exempt as per art. 143 par. (2) letter d), the total value of the deliveries, determined as per the provisions of art. 137 par. (1) letter c) by each VAT identification number assigned to the taxable person from the Member State in which the dispatch or transport of the goods took place;

h) for taxable intra-Community acquisitions, the total value for each supplier;

i) for assimilated intra-Community acquisitions that follow a transfer from another Member State, the total value thereof established as per the provisions under art. 137 par. (1) letter c) by each VAT identification number assigned to the taxable person by the Member State where the dispatch or transport of the goods started or, as applicable, by the code of the Member State in question if the taxable person is not registered as a payer of value-added tax in that Member State;

j) for the acquisitions of services provided under art. 133 par. (2), other than those exempt from value-added tax, the total value thereof for each supplier;

k) the value of the VAT adjustments performed according to the provisions under art. 138 and art. 138¹

The above shall be declared for the calendar month during which the regularization was communicated to the client.

(4) The recapitulative declarations shall be submitted only for the periods in which the value-added tax becomes chargeable for the operations mentioned under par. (1).

ART. 157

Payment of the value-added tax to the budget

(1) Any person must pay to the fiscal bodies the tax owed on or before the date on which he/she is bound to submit one of the declarations provided under art. 156² and 156³.

(2) By way of exception from the provisions under par. (1), the taxable person registered as per art. 153 shall provide in the declaration stipulated at art. 156², both as collected tax and as deductible tax, within the limits and under the conditions

established by art. 145 - 147¹, the tax corresponding to intra-Community acquisitions, the goods and services acquired in his/her benefit for which such person is bound to pay value-added tax as per the provisions under art. 150 par. (2) – (6).

(3) The tax for imports of goods, except for the imports exempt from tax, is paid to the customs bodies as per the regulations in force regarding payment of customs duties. The importers who hold a single authorization for simplified customs procedures issued by another Member State or who perform imports of goods in Romania from the VAT viewpoint for which they are not bound to submit customs declarations of import must pay the value-added tax to the customs body on or before the date on which they are bound to submit the import declaration for VAT and excises.

(4) By way of exception from the provisions under par. (3), on or before December 31st, 2012, the persons registered as payers of value-added tax who obtained a certificate of postponement under the conditions established through order of the minister of public finance shall not perform the actual payment to the customs bodies. As of January 1st, 2013, by way of exception from the provisions under par. (3), the taxable persons registered as payers of value-added tax as per art. 153 shall not perform the actual payment to the customs bodies.

(5) The taxable persons provided under par. (4) indicate the value-added tax related to the imported goods in the declaration provided under art. 156², both as collected tax and as deductible tax, within the limits and under the conditions established at art. 145 - 147¹.

(6) In case the taxable person is not established in Romania and is exempt as per the provisions under art. 154 par. (3) from registration as per art. 153, the competent fiscal bodies must issue a decision specifying the manner of payment of the value-added tax for the deliveries of goods and/or supplies of services performed occasionally for which the taxable person is bound to pay the tax.

(7) For the import of goods exempt from value-added tax as per the provisions under art. 142 par. (1) letter l), the customs bodies may request the constitution of a collateral related to the value-added tax. Such collateral corresponding to these imports is constituted and issued as per the conditions established through order of the minister of public finance.

ART. 158

Responsibility of the payers and of the fiscal bodies

(1) Any person bound to pay value-added tax is responsible for the correct calculation and the payment within the legal term of the tax to the state budget and for the submission within the legal term of the VAT declaration and of the declarations provided under art. 156² - 156⁴ to the competent fiscal body, as per the present title and the customs legislation in force.

(2) The tax is administered by the fiscal bodies and the customs bodies based on the prerogatives thereof, as they are provided in the present title, in norms and in the customs legislation in force.

ART. 158¹

Database regarding intra-Community operations

The Ministry of Public Finance shall create an electronic database with information regarding the operations carried out by taxable persons registered as payers of

value-added tax, for purposes of exchange of information in the field of value-added tax with the Member States of the European Union.

ART. 158²

The register of intra-Community operators

(1) As of August 1st, 2010 the Register of intra-Community operators shall be created and organized with the National Agency for Fiscal Administration which comprises all the taxable persons and non-taxable legal persons that perform intra-Community operations, namely:

a) intra-Community deliveries of goods which take place in Romania as per art. 132 par. (1) letter a) and which are exempt from value-added tax under the conditions provided under art. 143 par. (2) letter a) and d);

b) subsequent deliveries of goods performed within a triangular operation provided under art. 132¹ par. (5), performed in the Member State of arrival of the goods and which are declared as intra-Community deliveries with code T in Romania;

c) provisions of intra-Community services, respectively services for which the provision under art. 133 par. (2) apply, which are performed by taxable persons established in Romania for the benefit of taxable persons not established in Romania but established within the Community, other than those exempt from VAT in the Member State where they are taxable;

d) intra-Community acquisitions of taxable goods which take place in Romania according to the provisions under art. 132¹;

e) intra-Community acquisitions of services, namely those for which the provisions under art. 133 par. (2) apply and which are performed for the benefit of taxable persons established in Romania, including of non-taxable persons registered as payers of value-added tax as per art. 153 or 153¹, by taxable persons not established in Romania but established within the Community and for which the beneficiary is bound to pay VAT as per art. 150 par. (2).

(2) On the date of the application for registration as payer of value-added tax as per art. 153 or 153¹ the taxable persons and the non-taxable legal persons shall request to the competent fiscal body to be registered in the Register of intra-Community operators as well if they intend to carry out one or several intra-Community operations of the type of those provided under par. (1).

(3) The persons registered as payers of value-added tax as per art. 153 and 153¹ shall request to be registered in the Register of intra-Community operators if they intend to carry out one or several intra-Community operations of the type of those provided under par. (1) before the performance of such operations.

(4) In order to be registered in the Register of intra-Community operators, the taxable persons and the non-taxable legal persons must submit to the competent fiscal body an application for registration accompanied by other supporting documents as well, as established by order of the National Agency of Fiscal Administration. In the case of the taxable persons it is compulsory that they should submit the criminal record issued by the competent authority in Romania for their shareholders, except for joint-stock companies, and that for their directors.

(5) In the case of the persons provided under par. (2), the fiscal body shall analyze and order the approval or motivated rejection of the application for registration in the Register of intra-Community operators once with the registration as payer of value-added tax or, as applicable, once with the communication of the decision of rejection of the request for registration as payer of value-added tax.

(6) In the case of the persons provided under par. (3), the fiscal body shall check the fulfillment of the requirement under par. (8) letter b) and shall order the immediate approval or rejection of the application.

(7) The approval or rejection of the application for registration in the Register of intra-Community operators is made through a decision issued by the competent fiscal body which is communicated to the applicant as per the Code of Fiscal Procedure. The registration in the Register of intra-Community operators produces effects as of the date of communication of the decision under the conditions provided by the Code of Fiscal Procedure.

(8) The following cannot be registered in the Register of intra-Community operators:

a) the taxable persons and the non-taxable legal persons who are not registered as payers of value-added tax as per art. 153 or 153¹;

b) the taxable persons whose shareholder or director is a person against which criminal action was started and/or whose criminal record includes crimes related to any of the operations provided under par. (1).

(9) The competent fiscal body shall remove from the Register of intra-Community operators the taxable persons who submit an application in this respect.

(10) The competent fiscal body shall remove *ex officio* from the Register of intra-Community operators:

a) the taxable persons and the non-taxable legal persons whose VAT identification number was cancelled *ex officio* by the competent fiscal bodies as per the provisions under art. 153 par. (9);

b) the taxable persons not registered as payers of value-added tax as per art. 153 who in the year following their registration in the Register did not carry out intra-Community operations of the type of those provided under par. (1);

c) the persons registered as per art. 153 or 153¹ who apply for cancellation of their registration as payers of value-added tax, under the law;

d) the taxable persons whose shareholder or director is a person against whom the criminal action related to any of the operations provided under par. (1) was started.

(11) The removal from the Register of intra-Community operators is made based on the decision issued by the competent fiscal body, which is communicated to the applicant as per the Code of Fiscal Procedure. The removal from the Register of intra-Community operators produces effects as of the date of communication of the decision under the conditions provided by the Code of Fiscal Procedure.

(12) The persons removed from the Register of intra-Community operators as per par. (9) and (10) may request to be reregistered in this Register after the causes that determined the removal no longer apply if they intend to carry out one or several intra-Community operations of the type of those provided under par. (1). The reregistration in the Register of intra-Community operators is made by the fiscal bodies under the conditions provided by the present article. The persons provided under par. (8) letter a) may also apply for reregistration in the Register of intra-Community operators if on the date of such application they are registered as payers of value-added tax as per art. 153 or 153¹, as well as the persons provided under par. (8) letter b), after the causes due to which they were not eligible for registration in the Register no longer apply.

(12¹) The taxable persons registered in the Register of intra-Community operators keep this quality in the case of amendment of the type of registration as payer of value-added tax as per art. 153 or 153¹, with the corresponding update of the information in this Register.

(13) The organization and operation of the Register of intra-Community operators, including the procedure of registration and removal from this Register, are approved through order of the National Agency for Fiscal Administration.

(14) The persons that are not registered in the Register of intra-Community operators do not have a valid VAT identification number for intra-Community operators, even if they are registered as payers of value-added tax as per art. 153 or 153¹.

(15) For purposes of the present article, *shareholders* means those shareholders holding at least 5% of the share capital of the company.

CHAPTER XIV

Common provisions

ART. 159

Correction of documents

(1) The correction of the information included in invoices or in other documents that replace the invoice is performed as follows:

a) if the document was not sent to the beneficiary, it shall be cancelled and a new one shall be issued;

b) if the document was sent to the beneficiary, either a new one is issued which must include, on the one hand, the information in the initial document, the number and date of the corrected document, the negative values and, on the other hand, the correct information and values, or a new document is issued containing the correct values and information at the same time with the issuance of a document with the negative values in which the number and date of the corrected document are mentioned.

(2) In the situations provided under art. 138 the providers of goods and/or the suppliers of services must issue invoices or other documents with the values registered as negative, when the taxation base is reduced or, as applicable, with the values registered as positive if the base of taxation is increased; such documents shall be also transmitted to the beneficiary, with the exception of the situation provided under art. 138 letter d).

(3) The taxable persons who were subject to a fiscal inspection and with regard to whom errors were ascertained and established related to the correct establishment of the collected value-added tax and they were bound to pay such amounts based on the administrative act issued by the competent fiscal authority, may issue correction invoices as per par. (1) letter b) to the beneficiaries. Mention shall be made on the invoices issued of the fact that they are issued after the investigation and they shall be registered in a separate column in the value-added tax declaration. The beneficiaries have the right of deduction of the value-added tax registered on these invoices within the limits and under the conditions established under art. 145 - 147².

ART. 160

Simplification measures

(1) By way of exception from the provisions under art. 150 par. (1), in the case of taxable operations the person bound to pay the value-added tax is the beneficiary for the operations provided under par. (2). The mandatory condition for application of the reverse taxation is that both the supplier and the beneficiary should be registered as payers of value-added tax as per art. 153.

(2) The operations for which reverse taxation applies are the following:

a) the delivery of the following categories of goods:

1. ferrous and nonferrous waste, ferrous and nonferrous scrap, including the delivery of semi finite products resulting from the processing, manufacturing or melting thereof;
 2. residues and other recyclable materials resulting from ferrous and nonferrous metals, the alloys thereof, slag, ash and industrial residues containing metals or the alloys thereof;
 3. waste of recyclable materials and used recyclable materials consisting of paper, cardboard, textile fabrics, cables, rubber, plastic, shards of glass and glass;
 4. the materials provided under points 1 -3 after processing/transformation thereof through operations of cleaning, polishing, selection, cutting, fragmentation, pressing or casting into ingots, including ingots of nonferrous materials for the obtaining of which other alloying elements were added;
- b) the delivery of wood mass and wood materials, such as they are defined through Law no. 46/2008 – Forest Code, as subsequently amended and supplemented;
- c) the delivery of cereals and industrial plants mentioned below, which are included in the combined nomenclature established by the Regulations (EEC) no. 2.658/87 of the Council of July 23rd, 1987 on the tariff and statistical nomenclature and on the common customs tariff:

CN code	Product
1001 10 00	Durum wheat
1001 90 10	Alac (Triticum spelta), intended for sowing
ex 1001 90 91	Common wheat for sowing
ex 1001 90 99	Other alac (Triticum spelta) and common wheat, not intended for sowing
1002 00 00	Rye
1003 00	Barley
1005	Corn
1201 00	Soy beans, even crushed
1205	Rape or wild rape seeds, even crushed
1206 00	Sunflower seeds, even crushed
1212 91	Sugar beet

- d) the transfer of greenhouse emission certificates, such as they are defined under art. 3 in Directive 2003/87/EC of the European Parliament and of the Council of October 13th, 2003 establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Directive 96/61/EC of the Council,

which are transferrable as per art. 12 in the Directive, as well as the transfer of other units which can be used by the operators according to the same directive.

(3) On the invoices issued for the deliveries of goods/supplies of services provided under par. (2) the suppliers/providers shall not register the related collected value-added tax. The beneficiaries shall determine the related value-added tax, which shall be mentioned in the declaration provided under art. 156², both as collected tax and as deductible tax. The beneficiaries are entitled to deduct the tax within the limits and under the conditions provided by art. 145 - 147¹.

(4) Both the suppliers and the beneficiaries shall be responsible for the application of the provisions of the present article. The responsibilities of the parties involved in the situation in which reverse taxation was not applied shall be established through norms.

(5) The provisions of the present article shall apply only to deliveries of goods/supplies of services inside the country.

(6) The provisions under par. (2) letter c) shall be applied until May 31st, 2013, inclusive.

ART. 160¹ * Repealed**

CHAPTER XV Transitory provisions

ART. 161 Transitional provisions

(1) For purposes of par. (2) - (14):

a) a real estate property or part thereof is considered to be built before accession date, if such real estate property or part thereof was used for the first time before accession date;

b) a real estate property or part thereof is considered to be acquired before accession date, if the legal formalities for transfer of ownership from the seller to the purchaser were fulfilled before accession date;

c) the transformation or modernization of a real estate property or part thereof is considered to be performed by accession date if, after such transformation or modernization, the real estate property or part thereof was used for the first time before accession date;

d) the transformation and modernization of a real estate property or part thereof is considered performed after accession date if, after the transformation or modernization, the real estate property or part thereof was used for the first time after accession date;

e) the provisions under par. (4), (6), (10) and (12) apply only for works of modernization or transformation started before accession date, which were completed after accession date, and do not exceed 20% of the value of the real estate property or part thereof, exclusive of the value of the land, after transformation or modernization.

(2) The taxable person who was entitled to the full or partial deduction of the value-added tax and who, on or after accession date, does not opt for taxation or cancels the taxation option of any of the operations provided under art. 141 par. (2) letter e) for a real estate property or part thereof which is built, acquired, transformed or

modernized before accession date, by way of derogation from the provisions under art. 149 shall adjust the tax according to the norms.

(3) The taxable person who did not have the right to total or partial deduction of the value-added tax corresponding to a real estate property or part thereof which was built, acquired, transformed or modernized before accession date, and opts for taxation of any of the operations provided under art. 141 par. (2) letter e), on or after accession date, by way of derogation from the provisions under art. 149, and shall adjust the corresponding deductible tax according to the norms.

(4) If a real estate property or part thereof which was built, acquired, transformed or modernized before accession date, is transformed or modernized after accession date and the value of each transformation or modernization performed after accession date does not exceed 20% of the value of the real estate property or part thereof, exclusive of the value of the land, after transformation or modernization, the taxable person who had the right of total or partial deduction of the related value-added tax and does not opt for taxation of the operations provided under art. 141 par. (2) letter e) or cancels the taxation option, on or after accession date, by way of derogation from the provisions under art. 149, shall adjust the tax according to the norms.

(5) If a real estate property or part thereof which was built, acquired, transformed or modernized before accession date, is transformed or modernized after accession date and the value of each transformation or modernization performed after accession date exceeds 20% of the value of the real estate property or part thereof after transformation or modernization, the taxable person who was entitled to total or partial deduction of the related value-added tax does not opt for taxation of the operations provided under art. 141 par. (2) letter e) or cancels the taxation option on or after accession date, shall adjust the corresponding deductible tax according to the provisions under art. 149.

(6) If a real estate property or part thereof which was built, acquired, transformed or modernized before accession date is transformed or modernized after accession date and the value of each transformation or modernization performed after accession date does not exceed 20% of the value of the real estate property or part thereof, exclusive of the value of the land, after transformation or modernization, the taxable person who was not entitled to total or partial deduction of the related value-added tax opts for taxation of the operations provided under art. 141 par. (2) letter e) on or after accession date, by way of derogation from the provisions under art. 149, shall adjust the corresponding deductible tax according to the norms.

(7) If a real estate property or part thereof that was built, acquired, transformed or modernized before accession date is transformed or modernized after accession date and the value of each transformation or modernization performed after accession date exceeds 20% of the value of the real estate or part thereof, exclusive of the value of the land, after transformation or modernization, the taxable person who was not entitled to total or partial deduction of the related tax and opts for taxation of the operations provided under art. 141 par. (2) letter e) on or after accession date shall adjust the tax according to the provisions under art. 149.

(8) The taxable person who had the right of total or partial deduction of the value-added tax related to a construction or part thereof, the land on which it was located or any other land not buildable, which were built, acquired, transformed or modernized before accession date and who, on or after accession date, does not opt for the taxation of the operations provided under art. 141 par. (2) letter f), shall adjust the

corresponding deductible value-added tax under the conditions provided under art. 149, but the adjustment period is limited to 5 years.

(9) The taxable person who was not entitled to total or partial deduction of the value-added tax related to a construction or part thereof, the land on which it is located or any other land not buildable, which were constructed, acquired, transformed or modernized before accession date and who opts on or before accession date for taxation of the operations provided under art. 141 par. (2) letter f), shall adjust the corresponding deductible tax as per art. 149, but the adjustment period is limited to 5 years.

(10) If a construction or part thereof, the land on which it is located or any other land which is not buildable, that were constructed, acquired, transformed or modernized before accession date, are transformed or modernized after accession date and the value of each transformation or modernization performed after accession date does not exceed 20% of the value of the construction, exclusive of the value of the land after modernization or transformation, by way of derogation from the provisions under art. 149, the taxable person who had the right of total or partial deduction and does not opt for taxation of the operations provided under art. 141 par. (2) letter f), on or before accession date, shall adjust the tax deducted before and after accession date as per art. 149, but the adjustment period is limited to 5 years.

(11) If a construction or part thereof, the land on which it is located or any other land which is not buildable, and that were constructed, acquired, transformed or modernized before accession date, are transformed or modernized after accession date and the value of each transformation or modernization performed after accession date exceeds 20% of the value of the construction, exclusive of the value of the land, after transformation or modernization, the taxable person who had the right of total or partial deduction of the related value-added tax and does not opt for taxation of the operations provided under art. 141 par. (2) letter f), on or before accession date, shall adjust the tax deducted before and after accession date as per art. 149.

(12) If a construction or part thereof, the land on which it is located or any other land which is not buildable, that were constructed, transformed or modernized before accession date, or are transformed or modernized after accession date and the value of each transformation or modernization performed after accession date does not exceed 20% of the value of the construction, exclusive of the value of the land, after transformation or modernization, the taxable person who did not have a right of total or partial deduction of the related value-added tax, opts for taxation of the operations provided under art. 141 par. (2) letter f) on or after accession date, as per art. 149, but the adjustment period is limited to 5 years.

(13) If a construction or part thereof, the land on which it is located or any other land which is not buildable, that was constructed, acquired, transformed or modernized after accession date and the value of each transformation or modernization performed after accession date exceeds 20% of the construction value, exclusive of the value of the land, after transformation or modernization, by way of derogation from the provisions under art. 149 the taxable person who did not have the right of total or partial deduction of the related value-added tax opts for taxation of the operations provided under art. 141 par. (2) letter f) on or after accession date, shall adjust the tax not deducted before and after accession date as per art. 149.

(14) The provisions under par. (8) - (13) are not applicable to the delivery of a new construction or part thereof, as such is defined under art. 141 par. (2) letter f).

(15) In the case of contracts of sale of goods with payment in installments that were validly concluded on or before December 31st, 2006 and which are carried out after accession date as well, the chargeability of the value-added tax related to the installments due after accession date arises on each of the dates specified in the contracts for payment of the installments. In the case of leasing contracts validly concluded on or before December 31st, 2006 which are carried out after accession date as well, the interests corresponding to the installments due after accession date shall not be included in the base of taxation of the tax.

(16) In the case of tangible movable goods introduced in the country before accession date pursuant to leasing contracts concluded with users who are Romanian physical persons or legal persons and which were placed under a customs regime of import with exemption from payment of the amounts corresponding to all the rights of import, including of the value-added tax, if they are acquired by the users after accession date, the regulations in force on the date of entry into force of the contract shall be applied.

(17) The investment objectives materialized into a capital asset for which the year following the one of placement into operation is the year of Romania's accession to the European Union, shall be subject to the regime of adjustment of the deductible tax provided under art. 149.

(18) The value-added tax exemption certificates issued before accession date for deliveries of goods and supplies of services financed from non-reimbursable aids or loans granted by foreign governments, by international bodies and domestic and foreign nonprofit and charitable organizations or by physical persons preserve their validity during the performance of the objectives. Supplementations of the exemption certificates are not allowed after January 1st, 2007.

(19) In the case of firm contracts concluded on or before December 31st, 2006, the legal provisions in force on the date of entry into force of those agreements shall apply for the following operations:

a) research-development and innovation activities for the performance of programs, subprograms and projects, as well as actions comprised in the National plan for research-development and innovation, in the core programs and in the sector plans provided by Government Ordinance no. 57/2002 on scientific research and technological development, approved as subsequently amended and supplemented through Law no. 324/2003, as subsequently amended, as well as research-development and innovation activities financed through international, regional and bilateral partnership;

b) works of construction, arrangement, repairs and maintenance for monuments which commemorate fighters, heroes, war victims and victims of the Revolution in December 1989.

(20) The addenda to the contracts provided under par. (19) concluded on or after January 1st, 2007 shall be applied the legal provisions in force after accession date.

(21) For performance guarantees retained from the value of the works of construction and assembly which are included as such in fiscal invoices on or before December 31st, 2006 the legal provisions in force on the date of creation of such guarantees shall apply with respect to the chargeability of the value-added tax.

(22) For real estate works which result in a real estate property for which the general contractors opted before January 1st, 2007 for the value-added tax to be paid upon delivery of the real estate property, the legal provisions in force on the date they expressed this option shall apply.

(23) Joint-stock companies made up of Romanian taxable persons and foreign taxable persons or only of foreign taxable persons registered as payers of value-added tax on or before December 31st, 2006 as per the legislation in force on the date of incorporation, shall be considered distinct taxable persons and shall remain registered as payers of value-added tax until the date of completion of the contracts for which they were incorporated.

(24) The operations carried out as of accession date pursuant to contracts in progress on that date shall be subject to the provisions of the present title, with the exceptions provided by the present article and by art. 161^{^1}.

ART. 161^{^1}

Operations carried out on and before accession date

(1) The provisions in force at the moment when the goods were placed under one of the suspension regimes provided under art. 144 par. (1) letter a) point 1-7 or a similar regime in Bulgaria, shall continue to apply as of accession date and until the goods exit these regimes when the goods in question originating from Bulgaria or the Community area as such area was before accession date:

- a) entered into Romania before accession date; and
- b) were placed under such a regime upon entering Romania; and
- c) were not removed from the regime in question before accession date.

(2) The occurrence of any of the events below on or after accession date shall be considered as import to Romania:

- a) the exit of the goods in Romania from the regime of temporary admission under which they were placed before accession date under the conditions provided by par. (1), even if the legal provisions were not observed;
- b) removal of the goods in Romania from the customs regimes of suspension under which they were placed before accession date, under the conditions provided by par. (1), even if the legal provisions were observed;
- c) conclusion in Romania of an internal transit procedure started in Romania before accession date for purpose of delivery of goods for consideration in Romania before accession date by a taxable person acting as such. The delivery of goods by mail shall be considered for this purpose an internal transit procedure;
- d) conclusion in Romania of an external transit procedure started before accession date;
- e) any irregularity or breach of law which is committed in Romania during an internal transit procedure started under the conditions provided at letter c) or during an external transit procedure provided at letter d);
- f) the use in Romania as of accession date and by any person of the goods delivered to such person before accession date from Bulgaria or from the Community territory, as such territory was before accession date if:
 - 1. the delivery of the goods was exempt or it was probable to be exempt under the provisions of art. 143 par. (1) letters a) and b); and
 - 2. the goods were not imported before accession date in Bulgaria or in the Community area, as such area was before accession date.

(3) When an import of goods takes place in any of the situations provided under par. (2), there is no generating event of value-added tax if:

- a) the goods are dispatched or transported outside the Community territory, such as this territory was defined as of accession date; or

b) the goods imported for purposes of par. (2) letter a) are not means of transport and they are not re-dispatched or transported to the Member State from which they were exported and to be person who exported them; or

c) the goods imported for purposes of par. (2) letter a) are means of transport that were purchased or imported before accession date, under the general taxation conditions in Romania, in the Republic or Bulgaria or in another Member State in the Community territory, such as this territory was before accession date, and/or that did not benefit from exemption from payment of value-added tax or from the reimbursement thereof as a result of the export. This condition is considered fulfilled when the date of first use of the means of transport in question is prior to January 1st, 1999 and the amount of value-added tax owed upon import is not significant, according to the provisions of the norms.

ART. 161^{^2}

Transposed Directives

The present title transposes Directive 112, Directive 83/181/EEC of the Council of March 28th, 1983 determining the scope of article 14 paragraph (1) letter d) in Directive 77/388/EEC on the exemption from value-added tax of certain final imports of goods, published in the Official Journal of the European Communities (OJEC) no. L 105 of April 23rd, 1983, as subsequently amended and supplemented, Directive 2007/74/EC of the Council of December 20th, 2007 on the exemption from value-added tax and excises of goods imported by persons travelling from third countries, published in the Official Journal of the European Union (OJEU) no. L 346 of December 29th, 2007, Directive 2006/79/EC of the Council of October 5th, 2006 on the exemption from taxes of imports for small consignments of goods of a non-commercial character from third countries, published in the Official Journal of the European Union no. L 286 of October 17th, 2006, Directive 86/560/EEC – the thirteenth directive of the Council of the European Communities of November 17, 1986 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory, published in the Official Journal of the European Communities (OJEC) no. L 326 of November 21st, 1986, Directive 2008/9/CE of the Council of February 12th, 2008 laying down detailed rules for the refund of the value-added tax provided for in Directive 2006/112/EC to taxable persons not established in the Member State of refund but established in another Member State, published in the Official Journal of the European Union no. L 44 of February 20th, 2008.

TITLE VII
Excises and other special fees

CHAPTER I
Harmonized excises

SECTION 1 * Repealed**

ART. 162 * Repealed**

ART. 163 * Repealed**

ART. 163^{^1} * Repealed**

ART. 164 * Repealed**

ART. 165 * Repealed**

ART. 166 * Repealed**

ART. 167 * Repealed**

ART. 168 * Repealed**

SECTION 2 * Repealed**

ART. 169 * Repealed**

ART. 170 * Repealed**

ART. 171 * Repealed**

ART. 172 * Repealed**

ART. 173 * Repealed**

ART. 174 * Repealed**

ART. 175 * Repealed**

ART. 175^{^1} * Repealed**

ART. 175^{^2} * Repealed**

ART. 175^{^3} * Repealed**

ART. 175^{^4} * Repealed**

SECTION 3
Level of excises

ART. 176

Level of excises

(1) The level of harmonized excises is provided in appendix no. 1, which is an integral part of this title.

(2) The level of excises provided under no. 5 – 9 in appendix no. 1 also comprises the contribution for financing of certain health expenditures provided under title XI in Law no. 95/2006 on the health reform. The amounts of this contribution shall be transferred into the account of the Ministry of Public Health.

(3) For mineral oils for which the level of excises is set at 1,000 liters, the volume shall be measured at a temperature of 15 °C.

(4) For diesel used in agriculture, a reduced excise shall be applied.

(5) The level and conditions of application of the reduced excise shall be set through Government decision, at the proposal of the Ministry of Public Finance.

ART. 177

Calculation of the excise for cigarettes

(1) For cigarettes, the excise payable is to equal the sum of the specific excise and the ad valorem excise.

(2) The specific excise is computed by applying the legal percentage to the retail price of cigarettes issued for consumption, such percentage being provided in appendix no. 6.

(3) The specific excise expressed in Euro equivalent/1,000 cigarettes shall be determined annually, based on the average weighted retail price, of the legal percentage corresponding to the ad valorem excise and the total excise the level of which is set in appendix no. 6. This specific excise shall be approved by Government decision, at the proposal of the Ministry of Finance. The Government Decision shall be published in the Official Gazette of Romania, Part I, at least 15 days before the entry into force of the level of the total excise.

(4) The excise owed determined according to par. (1) cannot be lower than the level of the minimum excise expressed in the Euro equivalent/1,000 cigarettes, provided in appendix no. 6.

(5) The average weighted retail price shall be calculated according to the total value of the cigarettes released for consumption, based on the retail price including all fees, divided by the total quantity of cigarettes released for consumption. This weighted average price shall be set at March 1 of every year, based on the data regarding the total quantities of cigarettes released for consumption during the previous calendar year and shall be published on the website of the Ministry of Public Finance within 30 days as of the date it is set.

(6) The retail price for any cigarette brand shall be established and declared by the person releasing for consumption said cigarettes in Romania or importing them and shall be made public, according to the requirements provided by the methodological norms.

(7) The sale by any person of cigarettes for which the retail prices have not been established and declared is prohibited.

(8) The sale by any person of cigarettes at a price that exceeds the maximum retail price, declared, is prohibited.

SECTION 4 * Repealed**

ART. 178 * Repealed**

ART. 179 * Repealed**

ART. 180 * Repealed**

ART. 181 * Repealed**

ART. 182 * Repealed**

ART. 183 * Repealed**

ART. 184 * Repealed**

ART. 185 * Repealed**

SECTION 4¹ * Repealed**

ART. 185¹ * Repealed**

ART. 185² * Repealed**

SECTION 5 * Repealed**

ART. 186 * Repealed**

ART. 187 * Repealed**

ART. 188 * Repealed**

ART. 189 * Repealed**

ART. 189¹ * Repealed**

ART. 190 * Repealed**

ART. 191 * Repealed**

ART. 191¹ * Repealed**

ART. 192 * Repealed**

ART. 192¹ * Repealed**

SECTION 5¹ * Repealed**

ART. 192² * Repealed**

ART. 192³ * Repealed**

SECTION 5² * Repealed**

ART. 192⁴ * Repealed**

ART. 192⁵ * Repealed**

ART. 192⁶ * Repealed**

ART. 192⁷ * Repealed**

ART. 192⁸ * Repealed**

ART. 192⁹ * Repealed**

ART. 192¹⁰ * Repealed**

SECTION 5³ * Repealed**

ART. 192¹¹ * Repealed**

SECTION 6 * Repealed**

ART. 193 * Repealed**

ART. 194 * Repealed**

ART. 195 * Repealed**

ART. 196 * Repealed**

ART. 197 * Repealed**

ART. 198 * Repealed**

SECTION 7 * Repealed**

ART. 199 * Repealed**

ART. 200 * Repealed**

ART. 200¹ * Repealed**

ART. 201 * Repealed**

SECTION 8 * Repealed**

ART. 202 * Repealed**

ART. 203 * Repealed**

ART. 204 * Repealed**

ART. 205 * Repealed**

ART. 206 * Repealed**

SECTION 8¹ * Repealed**

ART. 206¹ * Repealed**

CHAPTER I¹
Harmonized excises regime

SECTION 1
General provisions

ART. 206²

Scope of application

The harmonized excises, hereinafter referred to as excises, are special fees charged directly or indirectly on the consumption of the following products:

- a) alcohol and alcoholic beverages;
- b) processed tobacco;
- c) mineral oils and electricity.

ART. 206³

Definitions

The following definitions are used for purposes of the present chapter:

1. excisable products are the products provided under art. 206², subject to the excise regulations as per the present chapter;
2. production of excisable products means any operation by which these products are produced, processed or modified in any manner;
3. authorized warehouse-keeper is a physical or legal person authorized by the competent authority, in the exercise of its activity, to produce, transform, hold, receive or dispatch excisable products under a suspension regime within a fiscal warehouse;
4. fiscal warehouse is a place where excisable products are produced, transformed, held, received or dispatched under a suspension regime by an authorized warehouse-keeper, in carrying out its activity, under the conditions provided by the present chapter and by the methodological norms;
5. Treaty means the Treaty establishing the European Community;
6. member state and the territory of a member state means the territory of each member state of the Community to which the conformity with art. 299 in the Treaty is applied, except for third territories;
7. Community and the Community territory means the territories of the member states, as defined under point 6;
8. third territories means the territories provided under art. 206⁴ par. (1) and (2);
9. third country means any state or territory to which the Treaty does not apply;
10. suspension customs procedure or customs suspension regime means any of the special procedures provided by the EEC Regulations no. 2.913/1992 of the Council of October 12, 1992 of establishment of the Community Customs Code the object of which is non-Community goods at the time of entry on the Community's customs territory, the temporary storage, the free zones or free warehouses, as well as any of the procedures provided by art. 84 par. (1) letter a) in these regulations;
11. suspension regime means a fiscal regime applied to the production, transformation, holding or dispatching of excisable products which do not form the object of a suspension customs procedure or regime, and for which the excises are suspended;
12. import of excisable products means the entry on the Community territory of excisable products, except for the case in which the products, upon entry thereof on Community territory are placed under a suspension regime or a suspension customs procedure, as well as the exit thereof from a suspension regime or a suspension customs procedure;
13. registered consignee means a physical or legal person authorized by the competent authority, in carrying out its activity and according to the conditions provided by the methodological norms, to receive excisable products which are dispatched under a suspension regime from another member state;
14. registered dispatcher means a physical or legal person that imports excisable products and is authorized by the competent authority, in carrying out its activity and according to the conditions provided by the methodological norms, exclusively to dispatch the excisable products under a suspension regime after the release thereof as per art. 79 in the EEC Regulations no. 2.913/92;
15. CN code means the tariff position, tariff sub-position or tariff code, as provided by the EC Regulations no. 2.658/87 of the Council of July 23, 1987 regarding the Tariff and Statistics Nomenclature and the Common Customs Tariff, in force as of October 19, 1992, and for the mineral oils in force as of January 1, 2002. Anytime amendments arise in the combined nomenclature of the Common Customs Tariff, the correspondence between the C.N. codes provided in the present chapter and the new C.N. codes shall be made according to the provisions in the methodological norms;
16. fiscal surveillance means any action or procedure of intervention of the competent authority for the prevention, fighting and sanctioning of fiscal fraud.

ART. 206⁴

Other territories of application

(1) The following territories part of the customs territory of the Community shall be deemed third territories:

- a) the Canary Islands;
- b) the French departments overseas;
- c) the Aland Islands;
- d) the Anglo-Norman Islands (the Channel Islands).

(2) The territories subject to art. 299 par. (4) in the Treaty shall be also deemed third territories, as well as the following territories which are not part of the customs territory of the Community:

- a) the Helgoland Island;
- b) the Büsingen territory;
- c) Ceuta;
- d) Melilla;
- e) Livigno;
- f) Campione d'Italia;
- g) the Italian waters of Lugano Lake.

(3) The operations involving excisable products originating from or dispatched to:

- a) the Principality of Monaco, shall be treated as dispatches from or to France;
- b) San Marino shall be treated as dispatches from or to Italy;
- c) the zones of Akrotiri and Dhekelia under the rule of the United Kingdom, shall be treated as dispatches from or to Cyprus;
- d) the Isle of Man shall be treated as dispatches from or to the United Kingdom;
- e) Jungholz and Mittelberg (Kleines Walsertal) shall be treated as dispatches from or to Germany.

(4) The formalities established through the Community customs provisions regarding the entry of the products in the customs territory of the Community shall apply *mutatis mutandis* to the entry on the territory of the Community of the excisable products which come from one of the territories mentioned under par. (1).

(5) The formalities established through Community customs provisions regarding the exit of the products from the customs territory of the Community shall apply *mutatis mutandis* to the exit of the excisable products from the territory of the Community which are dispatched to one of the territories mentioned under par. (1).

(6) Sections 7 and 9 of the present chapter shall not apply to the excisable products which form the object of any suspension customs procedure or regime.

ART. 206⁵

Generating event

The excisable products are subject to excises at the time of:

- a) production thereof, including, where applicable, at the time of extraction thereof, on the territory of the Community;
- b) import thereof on the territory of the Community.

ART. 206⁶

Chargeability

(1) Excises become chargeable at the time of release for consumption and in the Member State in which said release is made.

(2) The chargeability conditions and the level of the excises to be applied are those in force on the date when the excises become chargeable in the Member State where the release for consumption occurs.

ART. 206⁷

Release for consumption

(1) For purposes of the present chapter, release for consumption means:

- a) the exit of excisable products, even if irregular, from a suspension regime;
- b) the holding outside a suspension regime of excisable products for which the excises have not been charged according to the provisions of the present chapter;
- c) the production of excisable products, even if irregular, outside a suspension regime;

d) the import of excisable products, even if irregular, except if the excisable products are placed, immediately after import, in a suspension regime;

e) the use of excisable products within a fiscal warehouse, other than as raw material.

(2) The release for consumption shall be also deemed to be the holding by a trader for commercial purpose of excisable products which have been released for consumption in another Member State or have been imported in another Member State and for which the excises have not been charged in Romania.

(3) The moment of the release for consumption is:

a) in the cases provided by art. 206³⁰ par. (2) letter a) point 2, the moment of receipt of the excisable products by the registered consignee;

b) in the cases provided by art. 206³⁰ par. (2) letter a) point 4, the moment of receipt of the excisable products by the beneficiary of the exemption under art. 206⁵⁶;

c) in the cases provided by art. 206³⁰ par. (3), the moment of receipt of the excisable products at the place of direct delivery.

(4) Shall not be deemed release for consumption the movement of excisable products from the fiscal warehouse, under the conditions provided in section 9 of the present chapter and according to the methodological norms, if the moment is to:

a) another fiscal warehouse in Romania or another Member State;

b) a registered consignee in another Member State;

c) a territory outside the Community territory.

(5) The total destruction or irreversible loss of excisable products under a suspension regime for a reason related to the nature of the products, due to a *casus fortuitus* or a force majeure event or as a result of the authorization thereof by the competent authority, shall not be deemed release for consumption.

(6) For purposes of the present chapter, products are deemed totally destroyed or irreversibly lost when they become unusable as excisable products. The total destruction or irreversible loss of excisable products must be proven to the competent authority, as per the provisions of the methodological norms.

(7) In the case of an excisable product entitled to excise exemption, the use thereof for any purpose which is not in accordance with the exemption shall be deemed release for consumption.

(8) In the case of an energetic product for which the excises were not previously chargeable, the release for consumption shall be deemed to exist when the energetic product is offered for sale or used as motor fuel or fuel.

(9) In the case of an excisable product for which the excise was not previously chargeable, the release for consumption shall be deemed to exist when the excisable product is stored in a fiscal warehouse the authorization of which was revoked or cancelled. The excise shall become chargeable on the date on which the decision of revocation of the fiscal warehouse produces effects or on the date when the decision of cancellation of the fiscal warehouse authorization is communicated for the excisable products which can be released for consumption.

(10) In the case of an excisable product for which the excise was not previously chargeable, the release for consumption shall be deemed to exist when the excisable product is stored in a fiscal warehouse the authorization of which expired and a new one was not issued.

ART. 206⁸

Import

(1) For purposes of the present title, import represents any entry of excisable products from outside the Community territory, except for:

a) the placement of imported excisable products under a customs suspension regime in Romania;

b) the destruction of the excisable products under supervision of the customs authority;

c) the placement of excisable products in free zones, free warehouses or free harbors, under the conditions provided by the customs legislation in force.

(2) The following are also deemed to be an import:

- a) the removal of an excisable product from a customs suspension regime, if the product stays in Romania;
- b) the use for personal purposes in Romania of excisable products placed under a customs suspension regime;
- c) the occurrence of any other event which generates the obligation of payment of excises upon entry of the excisable products from outside of the Community territory.

ART. 206⁹

Payers of excises

(1) The payer of excises which have become chargeable is:

a) with respect to the exit of excisable products from a suspension regime, as provided by art. 206⁷ par. (1) letter a):

1. the authorized warehouse-keeper, the registered consignee or any other person who removes the excisable products from the suspension regime or on behalf of whom this removal is performed and, for the irregular removal from the fiscal warehouse, any other person who participated in this removal;

2. in case of an irregularity during a dispatch of excisable products under a suspension regime, as defined by art. 206⁴¹ par. (1), (2) and (4): the authorized warehouse-keeper, the registered consignor or any other person who secured the payment of the excises as per art. 206⁵⁴ par. (1) and (2), as well as any other person who participated in the irregular removal and who was aware or should have been aware of the irregular nature of this removal;

b) on what the holding of excisable products is concerned, as provided by art. 206⁷ par. (1) letter b): the person holding the excisable products or any other person involved in the holding thereof;

c) on what the production of these excisable products is concerned, as provided by art. 206⁷ par. (1) letter c): the person who produces the excisable products or, for an irregular production, any other person involved in the production thereof;

d) on what the import of excisable products is concerned, as provided by art. 206⁷ par. (1) letter d): the person who declares the excisable products or on behalf of whom the products are declared at the time of import or, for an irregular import, any other person involved in the import thereof.

(2) When several persons are bound to pay the same excise-related debt, they shall be jointly liable to pay said debt.

SECTION 2

Alcohol and Alcoholic beverages

ART. 206¹⁰

Beer

(1) For purposes of the present title, beer means any product included in C.N. Code 2203 00 or any product that contains a mixture of beer and a non-alcoholic beverage, included in C.N. Code 2206 00, and that in either case has an alcohol concentration of more than 0.5% by volume.

(2) Reduced specific excises are to apply for beer produced by small independent producers that own production facilities with an annual nominal capacity that does not exceed 200,000 hectoliters. The same regime applies for beer originating from small independent producers from other Member States, according to the provisions in the methodological norms.

(3) Small independent beer producers means all small economic agents that cumulatively fulfill the following conditions: are beer producing economic agents who, from a legal and economic perspective, are independent from any other beer producing economic agent; they use physical equipment different from those of other beer factories; they use production areas different from those of any other beer producing economic agent and do not operate under the product license of another beer producing economic agent.

(4) Each economic agent producer of beer is required to submit to the competent fiscal organ where the person is registered as an authorized warehouse-keeper, no later than January 15th of each year, a declaration on its own account regarding the production capacities that the person owns By

January 15 of each year, each authorized warehouse-keeper who is a small beer producer is bound to submit to the competent authority a statement on its own account regarding the production capacities the person owns, as per the provisions of the methodological norms.

(5) Beer produced by a physical person and consumed by such person and members of his or her family is exempt from the payment of the excises, on the condition that it is not sold.

ART. 206¹¹

Wines

(1) For purposes of the present chapter, wines are:

a) still wines, which include all products that are included in C.N. Codes 2204 and 2205, with the exception of sparkling wine as defined in letter b), and that:

1. have an alcohol concentration of more than 1.2% by volume, but not more than 15% by volume, provided that the alcohol contained in the final product results entirely from fermentation; or
2. have an alcohol concentration of more than 15% by volume, but not more than 18% by volume, that was obtained without any enrichment, provided that the alcohol contained in the final product results entirely from fermentation;

b) sparkling wines, which include all products that are included in C.N. Codes 2204 10, 2204 21 10, 2204 29 10 and 2205, and that:

1. are present in bottles that are closed by *mushroom* stoppers that are affixed by the aid of connections

or that are under pressure due to carbon dioxide in solution equal to or greater than 3 bars; and

2. have an alcohol concentration of more than 1.2% by volume, but not more than 15% by volume, provided that the alcohol contained in the final product results entirely from fermentation.

(2) Wine produced by a physical person and consumed by such person and members of his or her family is exempt from the payment of the excises, on the condition that it is not sold.

ART. 206¹²

Fermented beverages other than beer and wines

(1) For purposes of the present title, fermented beverages other than beer and wines means:

a) other still fermented beverages, which are included in C.N. Codes 2204 and 2205 and that are not specified in art. 206¹¹ and all products included in C.N. Code 2206 00, with the exception of other sparkling fermented beverages as defined in letter b) and any product provided in art. 206¹⁰, and that has:

1. an alcohol concentration of more than 1.2% by volume, but not more than 10% by volume; or
2. an alcohol concentration of more than 10% by volume, but not more than 15% by volume, provided that the alcohol contained in the final product results entirely from fermentation;

b) other sparkling fermented beverages, which are included in C.N. Codes 2206 00 31, 2206 00 39, 2204 10, 2204 21 10, 2204 29 10 and 2205, that are not covered by art. 206¹¹ and that are present in bottles that are closed by *mushroom* stoppers that are affixed by the aid of connections or that are under pressure due to carbon dioxide in solution equal to or greater than 3 bars, and that:

1. have an alcohol concentration of more than 1.2% by volume, but not more than 13% by volume; or
2. have an alcohol concentration of more than 13% by volume, but not more than 15% by volume, provided that the alcohol contained in the final product results entirely from fermentation.

(2) Fermented beverages other than beer and wines produced by a physical person and consumed by such person and members of his or her family are exempt from the payment of the excises, on the condition that they are not sold.

ART. 206¹³

Intermediate products

(1) For purposes of the present title, intermediate products means all products that have an alcohol concentration of more than 1.2% by volume, but not more than 22% by volume, and that are included in C.N. Codes 2204, 2205 and 2206 00, but not covered by art. 206¹⁰ - 206¹².

(2) An intermediate product is also any still fermented beverage specified in art. 206¹² par. (1) letter a), that has an alcohol concentration of more than 5.5% by volume and that does not result entirely from fermentation and the weight of absolute alcohol (100%) of which is over 50% the result of still fermentation base, including wine and beer.

(3) An intermediate product is also any sparkling fermented beverage that has an alcohol concentration of more than 8.5% by volume and that does not result entirely from fermentation and the weight of absolute alcohol (100%) of which is over 50% the result of still fermentation base, including wine.

ART. 206¹⁴

Ethyl alcohol

(1) For purposes of the present title, ethyl alcohol means:

a) all products that have an alcohol concentration of more than 1.2% by volume and that are included in C.N. codes 2207 and 2208, even when such products are part of a product that is included in another chapter of the combined nomenclature;

b) products that have an alcohol concentration of more than 22% and that are included in C.N. codes 2204, 2205 and 2206 00;

c) plum brandy and fruit brandies;

d) any other product in solution or not that contains potable spirits.

(2) Plum brandy and fruit brandies for own consumption of individual households, within the limit of a quantity equal to at most 50 liters of product for each individual household/year and with an alcoholic concentration of 100% by volume, shall be excised by application of a share of 50% of the standard share of the excise applied to ethyl alcohol, on condition it is not sold, as per the provisions of the methodological norms.

(3) For ethyl alcohol produced in small distilleries, the production of which does not exceed 10 hectoliters of pure alcohol/year, specific reduced excises shall be applied.

(4) Small distilleries which are independent from a legal and economic perspective from any other distillery, that do not operate under a product license of another distillery and that fulfill the requirements provided by the methodological norms shall benefit of a reduced level of excises.

SECTION 3

Tobacco products

ART. 206¹⁵

Tobacco products

(1) For purposes of the present title, tobacco products are:

a) cigarettes;

b) cigars and cigarillos;

c) smoking tobacco:

1. fine-cut smoking tobacco intended for cigarette rolls;

2. other smoking tobacco.

(2) Cigarettes are:

a) rolls of tobacco intended to be smoked as they are and that are not cigars or cigarillos for purposes of par. (3);

b) rolls of tobacco that may be introduced into a cigarette-paper tube by simple non-industrial handling;

c) rolls of tobacco that may be wrapped in cigarette paper by simple non-industrial handling;

d) any product that consists in part of substances other than tobacco if the product satisfies the criteria in lett. a), b) or c).

(3) Cigars or cigarillos are the following if, considering the properties thereof and the usual expectations of the customers, they can and have the exclusive role of being smoked as they are:

a) rolls of tobacco with outer wrapper of natural tobacco;

b) rolls of tobacco that have a threshed blend filler, an outer wrapper of the normal color of a cigar, made of reconstituted tobacco, which covers the product in full, including, as applicable, the filter, but excepting the tip for tipped cigarillos, if the unit weight, excluding the filter or mouthpiece, is not less than 2.3 grams or more than 10 grams and the circumference of the roll of tobacco over at least one-third of the length is not less than 34 millimeters;

c) any product that consists in part of substances other than tobacco if the product satisfies the criteria in lett. a) and b).

(4) Smoking tobacco is:

a) tobacco that has been cut or minced in any manner, twisted or pressed into blocks and that may be smoked without industrial processing;

b) tobacco refuse processed for retail that is not mentioned in par. (2) and (3) and which can be smoked. For purposes of this article, tobacco refuse shall be deemed to be refuse of tobacco leaves and secondary products obtained in processing tobacco or in producing tobacco products;

c) any product that consists in part of substances other than tobacco if the product satisfies the criteria in lett. a) or b).

(5) Fine-cut smoking tobacco intended for cigarette rolls is:

a) smoking tobacco as defined in par. (4) for which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 millimeters;

b) smoking tobacco for which more than 25% by weight of the tobacco particles have a cut width of more than 1.5 millimeters, if the smoking tobacco is sold or intended to be sold for the rolling of cigarettes.

(5¹) Without prejudice to the provisions under par. (2) letter d) and par. (4) letter c), the products that do not contain tobacco and are used exclusively for medical purposes shall not be treated as tobacco products, as per the provisions of the methodological norms.

(6) For the application of the excises, a roll of tobacco specified in par. (2) is considered as two cigarettes - when its length exclusive of filter and mouthpiece is more than 8 centimeters, but not more than 11 centimeters; as three cigarettes - when its length exclusive of filter and mouthpiece is more than 11 centimeters, but not more than 14 centimeters, and so forth.

(7) All economic agents that pay excises for tobacco products, according to the present chapter, shall be bound to present to the competent authority lists with data related to the excisable products released for consumption, as per the provisions of the methodological norms.

SECTION 4

Energy products

ART. 206¹⁶

Energy products

(1) For purposes of the present chapter, mineral oils are:

a) products with C.N. codes from 1507 to 1518, if they are intended to be used as fuels or motor fuels;

b) products with C.N. codes 2701, 2702 and from 2704 to 2715;

c) products with C.N. codes 2901 and 2902;

d) products with C.N. code 2905 11 00, which are not of synthetic origin, if they are intended to be used as fuels or motor fuels;

e) products with C.N. code 3403;

f) products with C.N. code 3811;

g) products with C.N. code 3817;

h) products with C.N. code 3824 90 99, if they are intended to be used as fuels or motor fuels.

(2) Only the following mineral oils shall be subject to the provisions in sections 7 and 9:

a) products with C.N. codes from 1507 to 1518, if they are intended to be used as fuels or motor fuels;

b) products with C.N. codes 2707 10, 2707 20, 2707 30 and 2707 50;

- c) products with C.N. codes from 2710 11 to 2710 19 69. For the products with codes C.N. 2710 11 21, 2710 11 25 and 2710 19 29, the provisions in section 9 shall apply only for wholesale commercial circulation;
- d) products with C.N. codes 2711, except for 2711 11, 2711 21 and 2711 29;
- e) products with C.N. code 2901 10;
- f) products with C.N. codes 2902 20, 2902 30, 2902 41, 2902 42, 2902 43 and 2902 44;
- g) products with C.N. code 2905 11 00, which are not of synthetic origin, if they are intended to be used as fuels or motor fuels;
- h) products with C.N. code 3824 90 99, if they are intended to be used as fuels or motor fuels.

(3) Energy products for which excises are due are:

- a) leaded petrol with C.N. codes 2710 11 31, 2710 11 51 and 2710 11 59;
- b) unleaded petrol with C.N. codes 2710 11 31, 2710 11 41, 2710 11 45 and 2710 11 49;
- c) gas oil with C.N. codes from 2710 19 41 to 2710 19 49;
- d) kerosene with C.N. codes 2710 19 21 and 2710 19 25;
- e) liquid petroleum gas with C.N. codes from 2711 12 11 to 2711 19 00;
- f) natural gas with C.N. codes 2711 11 00 and 2711 21 00;
- g) crude oil with C.N. codes from 2710 19 61 to 2710 19 69;
- h) coal and coke with C.N. code 2701, 2702 and 2704.

(4) Mineral oils, other than those provided under par. (3), are subject to excises if they are intended for use, offered for sale or used as fuel or motor fuel. The level of the excise is fixed based on the destination at the level applicable to the equivalent fuel for heating or motor fuel.

(4¹) Mineral oils provided under par. (3) letter g) or assimilated thereto, if intended for use, offered for sale or used as motor fuel, except for those used for sailing, are subject to an excise at the level of gas oil.

(5) Besides the excisable products specified in par. (1), any product intended for use, offered for sale or used as motor fuel or an additive to increase the final volume of motor fuels is to be taxed as motor fuel. The level of the excise is to be the level provided for the equivalent motor fuel.

(6) Apart from the mineral oils provided under par. (1), any hydrocarbon, with the exception of peat, intended for use, offered for sale or used for heating is subject to excises with the excise applicable to the equivalent mineral oil.

(7) The consumption of mineral oils within the place of production of mineral oils is not considered a generating event for excises when effected for the purposes of production. When such consumption is effected for purposes other than production and particularly for the propulsion of vehicles, then it is considered a generating event for excises.

ART. 206¹⁷

Natural gas

(1) Natural gas shall be subject to excises and the excises shall become chargeable at the time of supply by the distributors or redistributors authorized under the law directly to end consumers.

(2) Authorized economic agents in the field of natural gas are bound to register with the competent authority, under the conditions provided in the methodological norms.

(3) When natural gas is supplied in Romania by a distributor or redistributor from another Member State which is not registered in Romania, the excise becomes chargeable upon supply to the end consumer and shall be paid by a company appointed by that distributor or redistributor and which must be registered with the competent authority in Romania.

ART. 206¹⁸

Coal, coke and lignite

Coal, coke and lignite shall be subject to excises which shall become chargeable at the time of delivery by the economic agents who are producers or by the economic agents that perform intra-Community acquisition or that import such products. These economic agents are bound to register with the competent authority under the conditions provided by the methodological norms.

SECTION 5

Electricity

ART. 206¹⁹

Electricity

- (1) For purposes of the present chapter, electricity is the product with C.N. code 2716.
- (2) Electricity shall be subject to excises and the excise shall become chargeable at the time of supply of the electricity to the end consumers.
- (3) By way of derogation from the provisions of art. 206⁵, the consumption of electricity in order to maintain the production, transportation and distribution capacity of electricity, within the limits set by the National Energy Regulatory Authority shall not be deemed a generating event of excises.
- (4) The economic agents authorized in the field of electricity are bound to register with the competent authority, under the conditions provided by the methodological norms.
- (5) When electricity is supplied in Romania by a distributor or redistributor from another Member State, which is not registered in Romania, the excise becomes chargeable at the time of supply to the end consumer and shall be paid by a company appointed by that distributor or redistributor and which must be registered with the competent authority in Romania.

SECTION 6

Exemptions from payment of excises for mineral oils and electricity

ART. 206²⁰

Exceptions

- (1) Exempt from the payment of excises are:
 1. resulting heat and products with N.C. codes C.N. 4401 and 4402;
 2. the following uses of mineral oils and electricity:
 - a) mineral oils used for any purpose other than as fuel or motor fuel;
 - b) dual use of mineral oils. A mineral oil is used in a dual manner when used both as fuel and for other purposes than fuel or motor fuel. The use of mineral oils for chemical reduction and in electrolytic and metallurgic processes shall be deemed dual use;
 - c) electricity used mainly for chemical reduction and in electrolytic and metallurgic processes;
 - d) electricity, when it is more than 50% of the cost of a product, as per the provisions of the methodological norms;
 - e) mineralogical processes, as per the provisions of the methodological norms.
- (2) Shall not be deemed production of mineral oils:
 - a) operations during which small quantities of mineral oils are accidentally obtained;
 - b) operations through which the user of a mineral oil makes it possible to reuse it within its enterprise, on condition the excise already paid for this product is not smaller than the excise which could be due if the reused mineral oil were subject to excises;
 - c) an operation consisting of mixing – outside a production area or a fiscal warehouse – of mineral oils with other mineral oils or other materials, provided that:
 1. the excises on the components had been previously paid; and
 2. the amount aid is not smaller than the amount of the excise which could be applied on the mixture.
- (3) The condition provided under par. (2) letter c) pct. 1 shall not be applied if the mixture is exempt for a specific use.
- (4) The manner and conditions of application of par. (1) shall be regulated through methodological norms.

SECTION 7

Warehouse regime

ART. 206^{21*}

General rules

- (1) The production and transformation of excisable products must take place in a fiscal warehouse.
- (2) The exclusive storage of excisable products under a suspension regime may only take place in:
- a) fiscal warehouses of warehouse-keepers authorized for the production of mineral oils and of affiliates thereof, within the meaning provided under title I art. 7 pct. 21, for a number of at most 8 fiscal warehouses for each warehouse-keeper authorized for the production of such products in Romania, including the affiliates thereof. For purposes of the present provision, the warehouse-keeper authorized for the production of mineral oils is the economic agent who holds equipment and machines for oil refining and processing of the resulting fractions in order to obtain products subject to excises;
 - b) fiscal warehouses near airports, dedicated exclusively to the supply of aircrafts with mineral oils, based on the certificates issued in this respect by the competent authority in the aeronautical field;
 - c) fiscal warehouses of warehouse-keepers authorized for the production of cigarettes the market share of which is over 5% and of the affiliates thereof, within the meaning of title I art. 7 pct. 21, for a maximum number of two fiscal warehouses for each warehouse-keeper authorized for the production of such products in Romania, including the affiliates thereof.
- (3) The provisions under par. (1) shall not apply for:
- a) beer, wines and fermented beverages, other than beer and wines, which are produced in individual households for own consumption;
 - b) still wines produced by small producers who obtain less than 1,000 hectoliters of wine per year, on average;
 - c) electricity, natural gas, coal and coke.
- (4) If the small producers provided under par. (3) letter b) perform intra-Community transactions themselves, they must inform the competent authorities and observe the requirements set through the Regulations (EC) no. 884/2001 of the Commission of April 24, 2001 setting the norms of enforcement regarding the accompanying documents of transportations of wine products and the mandatory records in the wine field, as per the provisions in the methodological norms.
- (5) When small wine producers in another Member State are exempt from the obligations regarding the dispatch and monitoring of excisable products, the consignee in Romania shall inform the territorial competent authority with respect to the wine deliveries it received, through the document requested pursuant to the Regulations (EC) no. 884/2001 or through a reference thereto, as per the provisions in the methodological norms.
- (6) The fiscal warehouse may not be used for retail of excisable products.
- (7) The holding of excisable products outside a fiscal warehouse, for which no proof of the payment of excises may be made, attracts the payment of excises.
- (8) Exempt from the provisions of par. (6) are fiscal warehouses that deliver mineral oils to aircrafts, under the conditions provided by the methodological norms.
- (9) The production of excisable products outside a fiscal warehouse is forbidden.
- (10) The holding of an excisable product outside a fiscal warehouse if the excise for that product has not been charged is forbidden.
- *) See art. IV in Government Emergency Ordinance no. 54/2010, which was also reproduced in note 6 at the end of the updated text.

ART. 206²²*

Application for authorization of fiscal warehouse

- (1) A fiscal warehouse may operate only on the basis of a valid authorization issued by the competent authority through the Commission created at the level of the Ministry of Public Finance for the authorization of agents of products subject to harmonized excises, hereinafter referred to as the Commission.
- (1¹) By way of exception from the provisions under par. (1), the authorization by the Ministry of Public Finance of fiscal warehouses for exclusive production of wines performed by the taxpayers, other than large and medium taxpayers determined as per the regulations in force, as well as of

small distilleries, as provided under art. 206¹⁴ par. (4), can also be made through commission set up at the level of the territorial structures of the National Agency for Fiscal Administration.

(1²) The competences, and the composition, as well as the regulations of organization and functioning of the territorial commission shall be established by order of the minister of public finance, based on the endorsement of the National Agency for Fiscal Administration.

(2) In order to obtain authorization for a place to operate as a fiscal warehouse, the person that intends to be the authorized warehouse-keeper for such place must submit an application to the competent fiscal authority in the form and manner provided in the methodological norms.

(3) The application is to contain information and is to be accompanied by documents relating to:

- a) the location and nature of the place;
- b) the estimated types and quantity of excisable products to be produced and/or stored in the course of one year;
- c) the list of excisable products that are to be purchased under a suspension regime in order to be used as raw material for the production of excisable products;
- d) the identity and other information regarding the person that is to carry out the activity as the authorized warehouse-keeper;
- e) the administrative organization, the operational flows, the yield of the machines and equipment and other relevant data for the collection and establishment of excises, as provided in a procedural manual;
- f) the capacity of the person that is to be the authorized warehouse-keeper to satisfy the requirements provided by art. 206²⁶;
- g) the maximum production capacity of the equipment and machines in 24 hours, declared on own account by the physical person or the director of the legal person that intends to be an authorized warehouse-keeper;
- h) the holding of the environmental authorization/the integrated environmental authorization, issued as per the environmental laws, or a proof that the measures necessary to obtain said authorizations have been taken;
- i) the proof of submission of the minimum share capital subscribed and paid up in the amount provided by the methodological norms.

(4) The provisions under par. (3) shall be adapted according to the specific activity to be carried out in the fiscal warehouse, as per the provisions in the methodological norms.

(5) The person that intends to be authorized warehouse-keeper shall also present a copy of the management agreement or of the deeds of ownership for the place where the warehouse is located.

(6) The person who expressly mentions the intention thereof of being an authorized warehouse-keeper for several fiscal warehouses may submit only one application in this respect to the competent authority. Said application shall be accompanied by the documents provided in the present chapter and corresponding to each location.

(7) For purpose of exercising its attributions, the Commission may request any information and documents from the structures of the Ministry of Public Finance, the National Agency for Fiscal Administration and other state institutions, which it deems necessary in settling the pending applications.

(8) If the request of the Commission is addressed to the structures in the Ministry of Public Finance or the National Agency for Fiscal Administration, it shall be a mandatory assignment for the staff of these institutions. The failure to observe this obligation shall lead to sanctions, as per the provisions of the legislation in force.

(9) The Commission may request, as applicable, that the meetings be attended by the control bodies that performed the control assignments, as well as the legal representative of the respective trading company.

(10) The current activity of the Commission shall be performed through the secretariat which operates with the specialized directorate of the Ministry of Public Finance which is appointed through the ministry's decision of organization and operation.

(11) For purpose of performance of its prerogatives, the specialized directorate may request from different central and territorial structures of the Ministry of Public Finance and, respectively from the National Agency for Fiscal Administration, any other information and documents it deems necessary to settle the pending applications.

(12) If the analysis of the documentation attached to the application reveals to the specialty directorate that said application is incomplete, the file in question may be returned to the authority which issued it.

*) See art. III in Government Ordinance no. 30/2011, which was also reproduced in note 10 at the end of the updated text.

ART. 206²³*)

Conditions for authorization

(1) The competent authority is to issue a fiscal warehouse authorization for a place only if the following conditions are satisfied:

a) the place is to be used for the production, transformation, holding, receipt and/or dispatch of excisable products under a suspension regime;

b) the place is located, constructed, and equipped so as to prevent the removal of excisable products from such place without the payment of excises, as per the provisions in the methodological norms;

c) the place may not be used for the retail of excisable products, with the exceptions provided under art. 206²¹ par. (8);

d) in the case of a physical person that is to carry out the activity as the authorized warehouse-keeper, such person was not convicted in a final manner for abuse of trust, forgery, use of forgery, misleading, embezzlement, false statements, bribery in Romania or any of the foreign countries where the person had a domicile/residency in the last 5 years, was not convicted for a crime of those provided by the present code, by Government Ordinance no. 92/2003, republished, as subsequently amended and supplemented, by Law no. 86/2006 on the Customs Code of Romania, as subsequently amended, by Law no. 241/2005 on the prevention and fighting of tax evasion, by the Accounting law no. 82/1991, as republished, by Law no. 31/1990 on trading companies, as republished, as subsequently amended and supplemented;

e) in the case of a legal person that is to carry out the activity as the authorized warehouse-keeper, the administrators of such legal person were not convicted in a final manner for abuse of trust, forgery, use of forgery, misleading, embezzlement, false statements, bribery in Romania or any of the foreign countries where the person had a domicile/residency in the last 5 years, were not convicted for a crime of those provided by the present code, by Government Ordinance no. 92/2003, republished, as subsequently amended and supplemented, by Law no. 86/2006 on the Customs Code of Romania, as subsequently amended, by Law no. 241/2005 on the prevention and fighting of tax evasion, by the Accounting law no. 82/1991, as republished, by Law no. 31/1990 on trading companies, as republished, as subsequently amended and supplemented;

f) the person that is to carry out the activity as the authorized warehouse-keeper must demonstrate that such person is capable of satisfying the requirements provided in art. 206²⁶;

g) the person that is to carry out the activity as the authorized warehouse-keeper must not have outstanding fiscal liabilities to the general consolidated budget, like those managed by the National Agency for Fiscal Administration;

h) the level of excises for the finite product cannot be lower than the average weighted of the level of the excises for raw materials as per the provisions of the methodological norms;

i) the legal person is not undergoing bankruptcy or liquidation.

(2) The provisions under par. (1) shall be adequately adapted on groups of excisable products and categories of warehouse-keepers, as per the provisions of the methodological norms.

(3) The places corresponding to the state reserve and the mobilization reserve shall be assimilated to fiscal warehouses, as per the provisions of the methodological norms.

*) See art. III in Government Ordinance no. 30/2011, which is also reproduced in note 10 at the end of the updated text.

ART. 206^24

Authorization of fiscal warehouse

(1) The competent fiscal authority is to notify in writing the authorization of a fiscal warehouse by the 60th day after the date of submission of the complete documentation of authorization.

(2) The authorization is to contain the following:

a) the excise code assigned to the fiscal warehouse;

b) identification elements of the authorized warehouse-keeper, including the excise code assigned thereto;

c) the address of the fiscal warehouse;

d) the type of excisable products received/dispatched in/from the fiscal warehouse and the nature of the activity;

e) *** Repealed

f) the level of the guarantee;

g) the period of validity for the authorization. The period of validity is of 3 years for large and medium taxpayers determined as per the regulations in force and of one year in the other cases;

h) any other information which is relevant for the authorization.

(3) The competent authority may modify authorizations.

(4) In order to modify an authorization, the competent authority must inform the authorized warehouse-keeper of the proposed modification and the reason for such action.

(5) An authorized warehouse-keeper may request the competent fiscal authority to modify an authorization, under the conditions provided by the methodological norms.

(6) The procedure of authorization of fiscal warehouses is not subject to the legal provisions regarding tacit approval.

(7) The authorized warehouse-keeper that wants to continue the activity in a fiscal warehouse after expiry of the validity period recorded on the authorization for that fiscal warehouse shall request in writing to the competent authority, at least 60 days before the expiry of the validity term, to reauthorize it as fiscal warehouse, as per the provisions in the methodological norms.

(8) In the case provided under par. (7), the validity period of the fiscal warehouse authorization shall be extended by the date of settlement of the application for reauthorization.

ART. 206^25

Rejection of application for authorization

(1) The rejection of an authorization application is to be communicated in writing together with the reasons for this decision.

(2) In the case where the competent fiscal authority rejects an application for the authorization of a place as a fiscal warehouse, the person that submitted the application may contest the decision, according to the provisions of legislation in force in the administrative litigations field.

ART. 206^26

Obligations of authorized warehouse-keeper

(1) Any authorized warehouse-keeper is required to satisfy the following requirements:

a) deposit with the competent fiscal authority, a guarantee in the case of the production, transformation and holding of excisable products under a suspension regime, as well as an obligatory guarantee for the circulation of such products, as per the provisions under art. 206^54 and the conditions set through the methodological norms;

b) install and maintain any locks, seals, measuring instruments or other similar adequate devices, necessary to ensure the security of the excisable products located in the fiscal warehouse;

c) to ensure that the seals applied under the supervision of the competent authority are maintained in the form and according to the procedure provided by the methodological norms;

- d) maintain accurate and timely records regarding the raw materials, work-in-progress and finished excisable products, produced or received at fiscal warehouses and dispatched from fiscal warehouses, and provide adequate records upon the request of the fiscal authority;
- e) maintain an adequate system for the control of stock in the fiscal warehouse, including effective management, accounting and security systems;
- f) provide the competent fiscal authority with access to any area of the fiscal warehouse at any time while the fiscal warehouse is in operation and at any time while the fiscal warehouse is open for the receipt or dispatch of products;
- g) present excisable products for inspection by the competent fiscal authority, upon their request;
- h) upon the request of the competent fiscal authority, provide without charge an office within the fiscal warehouse;
- i) investigate and report to the competent fiscal authority any loss, shortage or other irregularity relating to excisable products;
- j) notify the competent authorities regarding any intended amendment to the initial details based on which the warehouse-keeper authorization was issued, at least 5 days before the amendment occurs;
- k) comply with other requirements imposed by norms.

(2) The provisions under par. (1) shall be adequately adapted on groups of excisable products and on categories of warehouse-keepers, as per the provisions of the methodological norms.

(3) The assignment or alienation in any form of the shares or quota shares of authorized warehouse-keepers or of a warehouse-keeper the authorization of whom was cancelled, revoked or suspended as per the present chapter shall be notified to the competent authority at least 60 days before the performance of this operation, in order to perform the fiscal inspection, except for those which form the object of capital market transactions.

(4) The alienation of assets of the type of corporal immovables which have a direct contribution to the production and/or storage of excisable products of the authorized warehouse-keeper or of a warehouse-keeper whose authorization was cancelled or revoked as per the present chapter can be made only after all fiscal liabilities were paid to the state budget or after the person who is to take over said assets undertook to pay the outstanding liability of the debtor through a payment commitment or through an authenticated deed and provided a collateral in the form of a letter of bank guarantee at the level of the outstanding fiscal liabilities of the warehouse-keeper on the date of performance of the transaction.

(5) The deeds concluded in breach of the provisions under par. (3) and (4) can be cancelled upon request of the fiscal body.

ART. 206²⁷

Regime of transfer of authorization

(1) Authorizations are to be issued only for the named authorized warehouse-keeper and are not transferable.

(2) When a place or business is sold, the authorization is not to be transferred automatically to the new owner. The new possible authorized warehouse-keeper must submit an application for authorization.

ART. 206²⁸

Cancellation, revocation and suspension of the authorization

(1) The competent authority may cancel an authorization for a fiscal warehouse when it was supplied inaccurate or incomplete information regarding the authorization of the fiscal warehouse.

(2) The competent fiscal authority is to revoke an authorization for a fiscal warehouse in the following situations:

a) in the case of an authorized warehouse-keeper, physical person, if:

1. the person dies;
2. the person is convicted by a definitive court decision in Romania or in a foreign state for abuse of trust, forgery, use of forgery, misleading, embezzlement, false statements, bribery, for a crime of those provided by the present code, by Government Ordinance no. 92/2003, republished, as

subsequently amended and supplemented, by Law no. 86/2006 on the Customs Code of Romania, as subsequently amended, by Law no. 241/2005 on the prevention and fighting of tax evasion, by the Accounting law no. 82/1991, as republished, by Law no. 31/1990 on trading companies, as republished, as subsequently amended and supplemented;

3. the activity carried out is in a situation of bankruptcy or liquidation;

b) in the case of an authorized warehouse-keeper that is a legal person, if:

1. a bankruptcy or liquidation proceeding is initiated with respect to the legal person; or

2. any administrator of the legal person is convicted by a definitive court decision in Romania or in a foreign state for abuse of trust, forgery, use of forgery, misleading, embezzlement, false statements, bribery, for a crime of those provided by the present code, by Government Ordinance no. 92/2003, republished, as subsequently amended and supplemented, by Law no. 86/2006 on the Customs Code of Romania, as subsequently amended, by Law no. 241/2005 on the prevention and fighting of tax evasion, by the Accounting law no. 82/1991, as republished, by Law no. 31/1990 on trading companies, as republished, as subsequently amended and supplemented;

c) the authorized warehouse-keeper fails to observe any of the requirements provided under art. 206²⁶ or art. 206⁵³ - 206⁵⁵;

d) the warehouse-keeper concludes a deed of sale of the place;

e) it is a case as provided under par. (9);

f) the authorized warehouse-keeper has outstanding fiscal debts with the general consolidated budget, like those managed by the National Agency of Fiscal Administration, and which are older than 60 days as of the legal payment term.

(3) The competent authority is to revoke the authorization for a fiscal warehouse if a definitive judgment was delivered for a crime of those provided by the present code, by Government Ordinance no. 92/2003, republished, as subsequently amended and supplemented, by Law no. 86/2006 as subsequently amended, by Law no. 241/2005, by Law no. 82/1991, as republished, by Law no. 31/1990, as republished, as subsequently amended and supplemented.

(4) At the proposal of the control bodies, the competent authority may suspend the authorization for a fiscal warehouse, as follows:

a) for a term of 1 to 6 years, if it is ascertained that an offence was committed leading to the suspension of the authorization;

b) until the definitive settlement of the criminal case, if the criminal action was started for a crime of those provided by the present code, by Government Ordinance no. 92/2003, as republished, as subsequently amended and supplemented, by Law no. 86/2006, as subsequently supplemented, by Law no. 241/2005, by Law no. 82/1991, as republished, by Law no. 31/1990, as republished, as subsequently amended and supplemented.

(5) The decision through which the competent authority established the suspension, revocation or cancellation of the fiscal warehouse authorization shall be communicated to the holder of said authorization.

(6) An authorized warehouse-keeper may contest a decision of suspension, revocation or cancellation of an authorization for a fiscal warehouse according to legislation in force.

(7) The decision of suspension or revocation of the fiscal warehouse authorization produces effects as of the date of communication thereof or as of another date comprised therein, as applicable. The decision of cancellation of the fiscal warehouse authorization produces effects as of the date of issuance of the authorization.

(8) The challenge of the decision of suspension, revocation or cancellation of the fiscal warehouse authorization does not suspend the legal effects of this decision for the term of settlement of the administrative procedure.

(9) If the fiscal warehouse-keeper wants to waive the authorization of a fiscal warehouse, said person shall be bound to notify this to the competent authority at least 60 days before the date on which that waiver produces effects.

(10) If an authorization is cancelled, a new one can be issued by the competent authority only after 5 years elapsed from cancellation date.

(11) If the authorization is revoked, a new one can be issued by the competent authority only after at least 6 months elapsed from revocation date.

(12) Authorized warehouse-keepers that had their authorizations suspended, revoked or cancelled and have stocks of excisable products on the date of said suspension, revocation or cancellation, may capitalize the products on stock – raw materials, semis, finite products – under the conditions provided by the methodological norms.

SECTION 8

Registered consignee

ART. 206²⁹

Registered consignee

(1) The registered consignee may carry out its activity as such only based on a valid authorization issued by the competent authority, as per the provisions in the methodological norms; said authorization shall also provide the excise code assigned by the authority.

(2) The registered consignee is not entitled to hold or dispatch excisable products under a suspension regime.

(3) A registered consignee must fulfill the following requirements:

a) secure the payment of excises under the conditions provided by the methodological norms, before moving the excisable products to the authorized warehouse-keeper;

b) upon conclusion of the movement, post in the accounting records the excisable products received under a suspension regime;

c) accept any control of the competent authority in order to make sure the products were received.

(4) The registered consignee who receives only occasionally excisable products must fulfill the requirements under par. (3) and the authorization provided in art. 206³ pct. 13 shall be given for a limited quantity of excisable products, for a single consignor and a limited period of time, as per the provisions in the methodological norms.

SECTION 9

Movement and receipt of excisable products under a suspension regime

ART. 206³⁰

Movement of excisable products under a suspension regime

(1) Warehouse-keepers authorized by the competent authorities of a Member State are acknowledged as authorized both for national circulation and for intra-Community circulation of excisable products.

(2) Excisable products can be moved under a suspension regime on Community territory, including if they are moved towards a third country or a third territory:

a) from a fiscal warehouse to:

1. another fiscal warehouse;

2. a registered consignee;

3. a place from where the excisable products leave the Community territory, for purposes of art. 206³⁴ par. (1);

4. a consignee in the sense provided by art. 206⁵⁶ par. (1), if the products are dispatched from another Member State;

b) from the place of import to any of the destinations provided under letter a), if the products in question are dispatched by a registered consignor. For purposes of the present article, the place of import means the place where the products are located when they are released for free circulation, according to art. 79 in the Regulations (EEC) no. 2.913/92. The consignor registered in Romania may carry out activity in this capacity only based of a valid authorization issued by the competent authority.

(3) By way of exception from the provisions under par. (2) letter a) pct. 1 and 2 and letter b) and except for the case provided under art. 206²⁹ par. (4), excisable products can be moved under a suspension regime to a place of direct delivery located in Romania, provided the place in question was mentioned by the authorized warehouse-keeper from Romania or the registered consignor, under the conditions established through the methodological norms.

(4) The authorized warehouse-keeper or the registered consignor provided under par. (3) are bound to observe the requirements of art. 206³³ par. (1).

(5) The provisions of par. (2) and (3) also apply to movements of excisable products with zero level of excises which were not released for consumption.

(6) The movement of the excisable products under a suspension regime starts, in the cases provided under par. (2) letter a), at the time when the excisable products leave the consignor fiscal warehouse and, in the cases provided under par. (2) letter b), at the time when these products are released for free circulation, as per art. 79 in the Regulations (EEC) no. 2.913/92.

(7) The movement under a suspension regime of excisable products is concluded:

1. in the cases provided under par. (2) letter a) points 1, 2 and 4 and letter b), at the time when the consignee receives all excisable products;

2. in the cases provided under par. (2) letter a) point 3, at the time when the excisable products leave the Community territory.

ART. 206³¹

Electronic administrative document

(1) The intra-Community movement of excisable products is deemed to take place under a suspension regime only if covered by processed electronic administrative document, as per par. (2) and (3).

(2) For purposes of par. (1), the consignor in Romania shall submit a draft electronic administrative document to the competent authorities through the electronic system provided under art. 1 in Decision no. 1.152/2003/EC of the European Parliament and of the Council of June 16, 2003 on computerizing the movement and surveillance of excisable products, hereinafter referred to as the computerized system.

(3) The competent authorities provided under par. (2) perform an electronic verification of the data in the draft electronic administrative document, and if:

a) the data are not accurate, the consignor is notified without delay;

b) the data are accurate, the competent authority assigns a single administrative reference code to the document and communicates it to the consignor.

(4) In the cases provided under art. 206³⁰ par. (2) letter a) points 1, 2 and 4, under art. 206³⁰ par. (2) letter b) and art. 206³⁰ par. (3), the competent authority sends without delay the electronic administrative document to the competent authority in the Member State of destination, which in its turn sends it to the consignee if such consignee is an authorized warehouse-keeper or a registered consignee. If the excisable products are intended for another authorized warehouse-keeper in Romania, the competent authority forwards the electronic administrative document directly to this consignee.

(5) In the case provided under art. 206³⁰ par. (2) letter a) point 3, the competent authority in Romania forwards the electronic administrative document to the competent authority in the Member State where the export declaration is lodged according to art. 161 par. (5) in the Regulations (CEE) no. 2.913/92, hereinafter referred to as the export Member State, if the export Member State is not Romania.

(6) When the consignor is from Romania, it shall supply to the person accompanying the excisable products one printed counterpart of the electronic administrative document.

(7) When the excisable products are moved under a suspension regime from a consignor in another Member State to a consignee in Romania, the movement of the products is accompanied by a printed counterpart of the electronic administrative document or by any other commercial document which clearly provides the single administrative reference code.

(8) The documents provided under par. (6) and (7) must be available for presentation to the competent authorities anytime they are requested, throughout the entire term of the movement under suspension regime.

(9) The consignor may cancel the electronic administrative document as long as the movement did not start, as per the provisions under art. 206³⁰ par. (6).

(10) During the movement under suspension regime, the consignor may change the destination through the computerized system and may indicate a new destination, which must be one of the destinations provided by art. 206³⁰ par. (2) letter a) point 1, 2 or 3 or art. 206³⁰ par. (3), as applicable, under the conditions provided through order of the chairman of the National Agency for Fiscal Administration.

(11) In case of intra-Community movement of mineral oils under suspension regime, by sea or by inland waterways to a consignee that is not known with certainty at the time when the consignor submits the draft electronic administrative document provided under par. (2), the competent authority may authorize the consignor not to include in the respective document the consignee details, as per the provisions of the methodological norms.

(12) Once the consignee details are known and at the latest upon conclusion of the movement, the consignor sends its details to the competent authorities using the procedure provided under par. (10).

ART. 206³²

Division of the movement of mineral oils under a suspension regime

The competent authority may allow the consignor, under the conditions provided through order of the chairman of the National Agency for Fiscal Administration, to divide an intra-Community movement of mineral oils under a suspension regime into two or several movements, provided that:

1. the total quantity of excisable products is not changed;
2. the division takes place on the territory of a Member State that allows such a procedure;
3. the competent authority in the Member State where the division is made is informed with regard to the place of division.

ART. 206³³

Receipt of excisable products under a suspension regime

(1) Upon receipt of excisable products in Romania, for any of the destinations provided under art. 206³⁰ par. (2) letter a) points 1, 2 or 4 or under art. 206³⁰ par. (3), the consignee must observe the following requirements:

- a) to confirm that the excisable products reached the destination;
- b) to keep the products received in order to be checked and to have the data in the electronic administrative document certified by the competent authority;
- c) as per the provisions in the methodological norms, to forward to the competent authority through the computerized system a report regarding the receipt of the products, hereinafter referred as report of receipt, without delay and not later than 5 business days as of conclusion of the movement.

(2) The means of confirmation of the fact that the excisable products reached their destination and of sending the report of receipt of excisable products to the consignees mentioned under art. 206⁵⁶ par. (1), as well as the term of storage of the excisable products received are provided through order of the chairman of the National Agency for Fiscal Administration.

(3) The competent authority of the consignee in Romania performs an electronic check of the data in the report of receipt, and then:

1. if the data are not accurate, the consignee is informed without delay;
2. if the data are correct, the competent authority of the consignee confirms the registration of the report of receipt and sends it to the competent authority in the Member State of dispatch.

(4) When the consignor is from Romania, the report of receipt is forwarded to it by the competent authority in Romania.

(5) If the place of dispatch and that of destination are both in Romania, the receipt of excisable products under a suspension regime shall be confirmed to the consignor according to the procedure established through order of the chairman of the National Agency of Fiscal Administration.

ART. 206³⁴

Export report

(1) In the situations provided under art. 206³⁰ par. (2) letter a) point 3 and, as applicable, art. 206³⁰ par. (2) letter b), the competent authorities in the Member State of export draw up an export report, based on the endorsement of the customs office of exit, provided under art. 793 par. (2) in the Regulations (EEC) no. 2.454/93 of the Commission or of the office where the formalities provided by art. 206⁴ par. (5) are performed, which certify that the excisable products left the Community territory.

(2) The competent authorities in the Member State of export check electronically the data resulting from the endorsement provided under par. (1). Once these data are checked and if the Member State of dispatch is different from that of export, the competent authorities in the Member State of export send the export report to the competent authorities in the Member State of dispatch.

(3) The competent authorities in the Member State of dispatch forward the export report to the consignor.

ART. 206³⁵

Proceedings in case the computerized system is not available upon dispatch

(1) By way of exception from the provisions under art. 206³¹ par. (1), if the computerized system is not available in Romania, the consignor may start a movement of excisable products under a suspension regime under the following conditions:

a) the products should be accompanied by a printed document with the same data as those in the draft electronic administrative document provided under art. 206³¹ par. (2);

b) the consignor informs the competent authorities before starting the movement, through the procedure set through order of the chairman of the National Agency for Fiscal Administration.

(2) If the computerized system becomes available again, the consignor submits a draft electronic administrative document, as per art. 206³¹ par. (2).

(3) Once the data comprised in the electronic administrative document are validated as per art. 206³¹ par. (3), this document replaces the printed document provided under par. (1) letter a). The provisions of art. 206³¹ par. (4) and (5), as well as those of art. 206³³ and 206³⁴ shall apply mutatis mutandis.

(4) Until the time of validation of the data in the electronic administrative document, the movement is deemed to take place under a suspension regime based on the printed document provided under par. (1) letter a).

(5) A copy of the printed document provided under par. (1) letter a) shall be kept by the consignor in its records.

(6) If the computerized system is not available upon dispatch, the consignor communicates the information provided under art. 206³¹ par. (10) or art. 206³² through alternative means of communication. To this end, the consignor in question informs the competent authorities before changing the destination or the division of the movement. The provisions of par. (2) - (5) shall apply mutatis mutandis.

ART. 206³⁶

Proceedings in case the computerized system is not available at destination

(1) If, in the situations provided under art. 206³⁰ par. (2) letter a) points 1, 2 and 4, la art. 206³⁰ par. (2) letter b) and art. 206³⁰ par. (3), the report of receipt stipulated by art. 206³³ par. (1) letter c) cannot be presented upon conclusion of the dispatch of the excisable products within the term provided at such article because the computerized system is not available in Romania, or in the situation provided under art. 206³⁵ par. (1) the procedures stipulated by art. 206³⁵ par. (2) and (3) have not been performed yet, the consignee presents to the competent authority in Romania, except for completely justified cases, a hard copy document containing the same data as the report

of receipt and certifying the conclusion of the movement, as per the provisions in the methodological norms.

(2) Except if the consignee may present the report of receipt provided by [art. 206³³](#) par. (1) letter c) through the computerized system within a short period of time or in completely justified cases, the competent authority in Romania sends a copy of the hard copy document provided under par. (1) to the competent authority in the Member State of dispatch, which sends such copy to the consignor or keeps it available to the consignor.

(3) Once the computerized system is available again or the procedures provided under [art. 206³⁵](#) par. (2) and (3) are fulfilled, the consignee presents a report of receipt, according to [art. 206³³](#) par. (1) letter c). The provisions of [art. 206³³](#) par. (3) and (4) shall apply mutatis mutandis.

(4) If, in the situations provided under [art. 206³⁰](#) par. (2) letter a) point 3, the export report provided by [art. 206³⁴](#) par. (1) cannot be replaced upon conclusion of the movement of the excisable products because either the computerized system is not available in the Member State of export or, in the situation provided by [art. 206³⁵](#) par. (1), the procedures stipulated by [art. 206³⁵](#) par. (2) and (3) have not been performed yet, the competent authorities in the Member State of export send to the competent authority in Romania a hard copy document containing the same data as the export report and certifying the conclusion of the movement, except if the export report provided under [art. 206³⁴](#) par. (1) can be drawn up within a short period of time through the computerized system, or in completely justified cases, as per the provisions of the methodological norms.

(5) In the case provided under par. (4), the competent authorities in Romania send or make available to the consignor a copy of the hard copy document.

(6) Once the computerized system is available again in the Member State of export or once the procedures provided under [art. 206³⁵](#) par. (2) and (3) are fulfilled, the competent authorities in the Member State of export send an export report, according to [art. 206³⁴](#) par. (1). The provisions under [art. 206³⁴](#) par. (2) and (3) shall apply mutatis mutandis.

ART. 206³⁷

Conclusion of the movement of excisable products under a suspension regime

(1) Notwithstanding the provisions of [art. 206³⁶](#), the report of receipt provided by [art. 206³³](#) par. (1) letter c) or the export report provided by [art. 206³⁴](#) par. (1) represent the proof of the fact that the movement of excisable products is concluded, as per [art. 206³⁰](#) par. (7).

(2) By way of derogation from par. (1), in lack of a report of receipt or an export report for reasons other than those provided under [art. 206³⁶](#), the proof of conclusion of the movement of excisable products under a suspension regime can also be supplied, in the cases provided under [art. 206³⁰](#) par. (2) letter a) points 1, 2 and 4, [art. 206³⁰](#) par. (2) letter b) and [art. 206³⁰](#) par. (3), by a note made by the competent authorities in the Member State of destination, based on adequate evidence that should indicate that the excisable products dispatched have reached the declared destination or, in the case provided under [art. 206³⁰](#) par. (2) letter a) point 3, by a note made by the competent authorities in the Member State on the territory of which the customs office of exit is located, which should certify that the excisable products left the Community territory.

(3) For purposes of par. (2), a document forwarded by the consignee and which contains the same data as the report of receipt or the export report represents an adequate proof.

(4) When the competent authorities in the Member State of dispatch admit the adequate proof, they close the movement in the computerized system.

ART. 206³⁸

Structure and content of the messages

(1) The structure and content of the messages that must be exchanged according to [art. 206³¹](#) - [206³⁴](#) by the persons and competent authorities involved in an intra-Community movement of excisable products under a suspension regime, the norms and procedures related to the exchange of said messages, as well as the structure of the hard copy documents provided by [art. 206³⁵](#) and [206³⁶](#) are established by the European Commission.

(2) The situations in which the computerized system is deemed unavailable in Romania, as well as the norms and procedures which must be followed in these situations are established by order of the chairman of the National Agency for Fiscal Administration.

ART. 206³⁹

Simplified procedures

(1) The monitoring of the movements of excisable products under a suspension regime which takes place entirely on Romanian territory shall be performed according to the procedures approved by order of the chairman of the National Agency for Fiscal Administration established based on the provisions of art. 206³¹ - 206³⁷.

(2) By way of agreement and under the conditions established by Romania with other Member States interested, simplified procedures can be set for frequent and regular movements of excisable products under a suspension regime which take place between the territories thereof.

(3) The provisions under par. (2) include the movements through fixed pipelines.

ART. 206⁴⁰

Movement of an excisable product under a suspension regime after it was released for free circulation in the simplified customs procedure

(1) The movement of excisable products released for free circulation by an importer holding a single authorization for simplified customs procedures issued by the competent authority in another Member State and the products in question are released for consumption in Romania, can be made under a suspension regime if the following conditions are fulfilled:

a) the importer is authorized by the competent authority in its state to perform operations with excisable products under a suspension regime;

b) the importer holds an excise code in the authorizing Member State;

c) the movement takes place between:

1. a customs office of entry in Romania and a fiscal warehouse or a registered consignee in Romania;

2. a customs office of entry on the Community territory located in another Member State that participates in the enforcement of the simplified customs procedure and a fiscal warehouse or a registered consignee in Romania, and the movement of the excisable products is covered by a transit procedure which starts at the border;

3. a customs office of entry on the Community territory located in another Member State that does not participate to the enforcement of the simplified customs procedure and a fiscal warehouse or a registered consignor in Romania, and the movement of the excisable products is covered by a transit procedure which starts at the border;

d) the excisable products are accompanied by a printed counterpart of the electronic administrative document provided under art. 206³¹ par. (1).

(2) The provisions of par. (1) also apply if the importer registered in Romania holds a single authorization for simplified customs procedures issued by the customs authority in Romania and the products are released for consumption in another Member State that participates to the enforcement of the simplified customs procedure.

ART. 206⁴¹

Irregularities and deviations

(1) When an irregularity occurred during a movement of excisable products under a suspension regime which led to a release for consumption thereof as per art. 206⁷ par. (1) letter a), it shall be deemed that the release for consumption takes place in the Member State where the irregularity occurred.

(2) If, during a movement of excisable products under a suspension regime, an irregularity was found which led to the release for consumption of said products as per art. 206⁷ par. (1) letter a) and it is not possible to determine where the irregularity occurred, it shall be deemed that it occurred in the Member State and at the time when it was discovered.

(3) In the situations provided under par. (1) and (2), the competent authorities in the Member State where the products were released for consumption or those in which it is deemed they were released for consumption must inform the competent authorities in the Member State of dispatch.

(4) When the excisable products which are moved under a suspension regime did not reach their destination and during the movement no irregularity was discovered which would be deemed a release for consumption according to art. 206⁷ par. (1) letter a), it shall be deemed that the irregularity occurred in the Member State of dispatch and at the time of dispatch of the excisable products. An exception to the provisions of par. (4) is the case in which within a term of 4 months as of the beginning of the movement according to art. 206³⁰ par. (6), the consignor supplies the proof of conclusion of the movement or of the place where the irregularity occurred, in a manner which is deemed satisfactory by the competent authorities in the Member State of dispatch, according to art. 206³⁰ par. (7). If the person that created the collateral according to the provisions of art. 206⁵⁴ did not or could not know the fact that the products did not reach their destination, said person shall be given a term of one month as of the moment the person is communicated this information by the competent authorities in the Member State of dispatch to present the proof of conclusion of the movement, according to art. 206³⁰ par. (7), or of the place where the irregularity occurred.

(5) In the cases provided by par. (2) and (4), if the Member State where the irregularity actually occurred is identified within a term of 3 years as of the starting date of the movement, as per art. 206³⁰ par. (6), the provisions under par. (1) are to apply. In these situations, the competent authorities in the Member State where the irregularity occurred inform the competent authorities in the Member State where the excises were charged and the latter Member State returns or transfers the excises when the proof that the excises were charged in the other Member State is presented.

(6) For purposes of the present article, irregularity means a situation occurred during a movement of excisable products under a suspension regime, different than that provided by art. 206⁷ par. (5) and (6), due to which a movement or a segment of a movement of excisable products was not concluded as per art. 206³⁰ par. (7).

SECTION 10

Returns of excises

ART. 206⁴²

Returns of excises

(1) Except for the cases provided by art. 206⁴⁴ par. (7), art. 206⁴⁷ par. (5) and art. 206⁴⁹ par. (3) and (4), as well as for the cases provided under art. 206⁵⁸ - 206⁶⁰, excises related to excisable products that were released for consumption can be returned or transferred, upon request of the person in question, to the competent authorities in the Member States where said products were released for consumption, in the situations provided by the Member States and according to the conditions set by the Member State in question, in order to prevent any possible form of evasion or abuse. Such a return or transfer may generate other exemptions than those provided by art. 206⁵⁶ and art. 206⁵⁸ - 206⁶⁰.

(2) For the mineral oils which are accidentally contaminated or combined, and are returned to the fiscal warehouse for recycling, the excises paid can be returned under the conditions provided by the methodological norms.

(3) For alcoholic beverages and tobacco products recalled from the market, if the state or age thereof makes them improper for consumption or they do not fulfill the marketing requirements, the excises paid can be returned under the conditions provided by the methodological norms.

(3¹) For the excisable products that were released for consumption in Romania and which are subsequently exported, the person that performed the export is entitled to the return of excises, under the conditions provided by the methodological norms.

(4) The returned excise cannot exceed the amount actually paid.

SECTION 11

Intra-Community movement and taxation of excisable products after release for consumption

ART. 206⁴³

Physical persons

(1) The excises for the excisable products purchased by a physical person for own use and transported personally by said person to Romania are chargeable only in the Member State where the excisable products are purchased.

(2) In order to establish whether the excisable products provided under par. (1) are intended for own use of a physical person, at the least the following requirements shall be considered:

a) the commercial status of the person holding the excisable products and the reason for such holding;

b) the place where the excisable products are or, if applicable, the means of transportation used;

c) any document related to the excisable products;

d) the nature of the excisable products;

e) the quantity of excisable products.

(3) The products purchased from physical persons are deemed to be intended for commercial purposes under the conditions and in the quantities provided in the methodological norms.

(4) The products purchased and transported in quantities which exceed the limits provided by the methodological norms and are intended for consumption in Romania shall be deemed to have been purchased for commercial purposes and, in such case, the excise shall be owed in Romania.

(5) The excise also becomes chargeable in Romania for the quantities of mineral oils already released for consumption in another Member State, if these products are transported with an atypical means of transportation by a physical person or on behalf thereof. For purposes of this paragraph, atypical means of transportation means the transportation of fuel in other recipients than the tanks of vehicles or adequate canisters for fuels and the transportation of liquid products for heating in other recipients than tankers used on behalf of professional economic agents.

ART. 206⁴⁴

Products with excises paid, held for commercial purposes in Romania

(1) Notwithstanding the provisions of art. 206⁴⁷ par. (1), if the excisable products that were already released for consumption in another Member State are held for commercial purposes in Romania in order to be delivered or used therein, the products in question are to be subject to excises and the excises become chargeable in Romania.

(2) For purposes of the present article, holding for commercial purposes means holding of excisable products by another person than a physical person or by a physical person for other purposes than own use and transported by such person according to art. 206⁴³.

(3) The conditions of chargeability and the level of the excises that are to be applied are those in force on the date the excises become chargeable in Romania.

(4) The person who pays excises that have become chargeable is, in the cases provided under par. (1), the person who performs the delivery or holding of the products intended for delivery or to whom the products are delivered in Romania.

(5) Notwithstanding the provisions of art. 206⁴⁹, if the excisable products that have already been released for consumption in a Member State move within the Community for commercial purposes, the products in question are not considered held for such purposes until the moment they arrive in Romania, on condition the movement is performed based on the formalities provided under art. 206⁴⁵ par. (1) and (2).

(6) Excisable products held on board of a ship or aircraft that sails or flies between another Member State and Romania, which are not available for sale at the time the ship or aircraft is on the territory of one of the two Member States, are deemed to be held in the Member State in question for commercial purposes.

(7) For excisable products that were already released for consumption in Romania and which are delivered in another member state, the trader that performed the delivery may benefit, upon

request, from the return or transfer of the excises if the competent authority finds that the excises have become chargeable and have been charged in the respective Member State, as per the provisions in the methodological norms.

ART. 206⁴⁵

Intra-Community movement of products with excises paid

(1) In the situation provided under art. 206⁴⁴ par. (1), excisable products circulate between Romania and another Member State or between another Member State and Romania with a waybill containing the main data in the document provided under art. 206³¹ par. (1). The structure and content of the waybill are established by the European Commission.

(2) The persons provided under art. 206⁴⁴ par. (4) must fulfill the following requirements:

- a) before the dispatch of the products, they must submit a declaration to the competent territorial authority and secure the payment of excises;
- b) pay the excises on the first business day immediately following the one when the products were received;
- c) accept any control that allows the competent territorial authorities to make sure the excisable products were actually received and the chargeable excises thereof were paid.

ART. 206⁴⁶

Waybill

(1) The waybill is drawn up by the supplier in 3 counterparts and is used as follows:

- a) the first counterpart is kept by the supplier;
- b) counterparts 2 and 3 accompany the excisable products during transportation, until the products reach the receiver;
- c) counterpart 2 is kept by the receiver of the products;
- d) counterpart 3 must be returned to the supplier, with certification of receipt and mentioning of the subsequent fiscal treatment of the excisable products in the Member State of destination, if the supplier expressly requests this for purposes of return of excises.

(2) The model of the waybill is to be provided in the methodological norms.

ART. 206⁴⁷

Remote sale

(1) Excisable products already released for consumption in another Member State which are purchased by a person other than an authorized warehouse-keeper or a registered consignee established in Romania who does not perform an independent economic activity and which products are dispatched or transported to Romania, either directly or indirectly, by the seller or on behalf thereof, are subject to excises in Romania.

(2) In the case provided under (1), excises become chargeable in Romania at the time of delivery of the excisable products. The conditions of chargeability and the level of the excises to be applied are those in force on the date the excises become chargeable. The excises are paid in accordance with the procedure established in the methodological norms.

(3) The payer of excises in Romania is either the seller or a fiscal representative thereof established in Romania and authorized by the competent authorities in Romania. When the seller does not observe the provisions of par. (4) letter a), the payer of excises is the consignee of the excisable products.

(4) The seller or the fiscal representative thereof must fulfill the following requirements:

- a) before the dispatch of the excisable products, it must register itself and secure the payment of excises under the conditions established and to the competent authority provided in the methodological norms;
- b) to pay the excises to the competent authority provided under letter a) after the arrival of the excisable products;
- c) to keep the accounting records of the deliveries of excisable products.

(5) Excisable products already released for consumption in Romania which are purchased by a person other than an authorized warehouse-keeper or a registered consignor established in another Member State which does not perform an independent economic activity and which are dispatched

or transported to that Member State, either directly or indirectly, by the seller or on behalf thereof, are subject to excises in that Member State. The excises charged in Romania are to be returned or transferred, upon request of the seller, if the seller or the fiscal representative thereof followed the procedures provided under par. (4), according to the requirements established by the competent authority in the Member State of destination.

ART. 206⁴⁸

Destructions and losses

(1) In the situations provided under art. 206⁴⁴ par. (1) and art. 206⁴⁷ par. (1), in case of total destruction or irreversible loss of excisable products during the transportation thereof in another Member State than the one they were released for consumption in and for reasons related to the nature of the products, a casus fortuitus or a force majeure event or as a consequence of the authorization by the competent authorities in the Member State in question, the excises are not chargeable in that Member State.

(2) The total destruction or irreversible loss of the excisable products in question shall be proven in a manner deemed satisfactory by the competent authorities in the Member State where said total destruction or irreversible loss occurred or in the Member State where it was ascertained, if such ascertaining is possible. The collateral submitted pursuant to art. 206⁴⁵ par. (2) letter a) or art. 206⁴⁷ par. (4) letter a) shall be issued.

(3) The rules and conditions based on which the losses mentioned under par. (1) are to be determined are provided in the methodological norms.

ART. 206⁴⁹

Irregularities occurring during the movement of excisable products

(1) When an irregularity occurred during a movement of excisable products, according to art. 206⁴⁴ par. (1) or art. 206⁴⁷ par. (1), in another Member State than the one in which the products were released for consumption, said products are subject to excises and the excises are chargeable in the Member State where the irregularity occurred.

(2) When an irregularity is ascertained during a movement of excisable products, according to art. 206⁴⁴ par. (1) or art. 206⁴⁷ par. (1), in another Member State than the one in which the products were released for consumption and it is not possible to determine the place where said irregularity occurred, it shall be deemed that it occurred in the Member State where it was ascertained and the excises shall be chargeable in said Member State. Nevertheless, if the Member State where the irregularity actually occurred is identified within a term of 3 years as of the date of purchase of the excisable products, the provisions under par. (1) are to apply.

(3) Excises are owed by the person who secured the payment thereof according to art. 206⁴⁵ par. (2) letter a) or art. 206⁴⁷ par. (4) letter a) and by any person who contributed to the irregularity.

(4) The competent authorities in the Member State where the excisable products were released for consumption return or transfer, upon request, the excises after they are charged in the Member State where the irregularity occurred or was ascertained. The competent authorities in the Member State of destination issue the collateral submitted pursuant to art. 206⁴⁵ par. (2) letter a) or art. 206⁴⁷ par. (4) letter a).

(5) For purposes of the present article, irregularity means a situation occurring during a movement of excisable products pursuant to art. 206⁴⁴ par. (1) or art. 206⁴⁸ par. (1), which is not subject to art. 206⁴⁷, and due to which a movement or a segment of a movement of excisable products was not adequately concluded.

ART. 206⁵⁰

Declarations regarding intra-Community purchases and deliveries

The registered consignees and the fiscal representatives are bound to send to the competent authority a monthly report on the purchases and deliveries of excisable products, by the 15th, inclusive, of the month following the one to which the report refers, under the conditions provided in the methodological norms.

SECTION 12

Obligations of payers of excises

ART. 206⁵¹*)

Payment of excises to the state budget

(1) Excises are revenues of the state budget. They are to be paid by the 25th, inclusive, of the month following that in which they become chargeable, except for the cases for which the present chapter expressly provides a different payment term.

(2) By way of exception from the provisions under par. (1), in the case of suppliers of electricity or natural gas, the payment term for the excises is the 25th of the month following that in which the end consumer was invoiced.

(3) In the case of import of an excisable product which is not placed under a suspension regime, by way of derogation from par. (1) the moment of payment of the excises is the moment of registration of the customs declaration of import.

(4) By way of derogation from the provisions of par. (1), the delivery of the mineral oils provided under art. 206¹⁶ par. (3) letters a) - e) from fiscal warehouses is to be made only at the time the supplier holds the payment document certifying the transfer to the state budget of the value of the excises corresponding to the quantity to be invoiced. On occasion of submission of the monthly declaration of excises the possible differences between the value of the excises transferred to the state budget by the beneficiaries of the products on behalf of the fiscal warehouse and the value of the excises corresponding to the quantities of mineral oils actually delivered thereto during the previous month are to be settled.

(5) By way of exception from the provisions under par. (1), any person who is in one of the situations provided by art. 206⁷ par. (7), (8) and (9) is bound to pay the excises within a term of 5 days as of the date they became chargeable.

(6) By way of exception from the provisions under par. (1), in the case of registered consignees, the payment term of the excises is the business day immediately following the one in which the excises become chargeable.

*) **1.** According to art. VII par. (1) letter b) in Government Emergency Ordinance no. 125/2011, the provisions of art. 206⁵¹ par. (6) shall apply as of April 1, 2012.

2. The provisions of art. 4 par. (2) and (3) in Government Emergency Ordinance no. 49/2010, as subsequently amended, are presented below.

"(2) By way of derogation from the provisions of art. 206⁵¹ par. (1) in Law no. 571/2003, as subsequently amended and supplemented, for the quantities of fuels provided by art. 1 par. (3), the excises are to be paid by September 30, 2011 *) inclusive.

(3) For the situation provided under par. (2) the provisions of art. 206⁵¹ par. (4) in Law no. 571/2003, as subsequently amended and supplemented, shall not apply."

*) According to art. II in Government Emergency Ordinance no. 50/2011, the term provided by art. 4 par. (2) in Government Emergency Ordinance no. 49/2010 shall be postponed until June 30, 2012, inclusive.

ART. 206⁵²

Submission of the declarations of excises

(1) Any payer of excises provided by this chapter is bound to submit to the competent authority, on a monthly basis, a declaration of excises, no matter if the payment of the excise is due to the month in question or not.

(2) By way of exception from the provision under par. (1), the registered consignee that receives only on occasions excisable products is bound to submit the declaration of excises for every such operation.

(3) Declarations of excises are to be submitted to the competent authority by the payers of excises by the 25th, inclusive, of the month following the one to which the declaration refers.

(4) By way of exception from the provisions under par. (3), any person that is in one of the situations provided by [art. 206⁷](#) par. (7), (8) and (9) is bound to submit without delay a declaration of excises with the competent authority.

(5) By way of exception from the provisions under par. (3), in the situations provided by [art. 206⁷](#) par. (1) letter b) and c) a declaration of excises must be immediately submitted to the competent fiscal authority and, by way of derogation from [art. 206⁵¹](#), the excise is to be paid on the business day immediately following the one in which the declaration was submitted.

ART. 206⁵³

Fiscal documents

For excisable products that are transported or held outside the fiscal warehouse, the origin thereof must be proven by using a document to be established through the methodological norms.

ART. 206^{54*}

Collaterals

(1) The authorized warehouse-keeper, the registered consignee and the registered consignor are bound to submit to the competent authority a security according to the provisions in the methodological norms, which should ensure the payment of the excises that may become chargeable. If the authorized warehouse-keeper, the registered consignee and the registered consignor have outstanding fiscal liabilities that have reached maturity over 30 days before and which are managed by the National Agency for Fiscal Administration the collateral shall also cover them de jure and without any other formality.

(2) By way of exception from the provisions of par. (1), the collateral may be submitted by the carrier, the owner of the excisable products or, jointly, by two or several of these persons or of the persons provided under par. (1), in the cases and under the conditions established through the methodological norms.

(3) The collateral is valid on the entire territory of the Community.

(4) The collateral represents 6% of the value of the excises corresponding to the products resulting at the level of one year, according to the technological production capacities for the newly set up warehouse. For authorized warehouse-keepers, the value of the collateral is to be calculated by application of the percentage of 6% to the value of the excises corresponding to the exits of excisable products in the last year, but not less than 6% of the value of the excises corresponding to the products that would result according to the technological production capacities. The type, manner of computation and term of the collateral shall be provided by the methodological norms.

(4¹) The value of the collateral cannot be lower than the amount established by the methodological norms, according to the nature of the excisable products to be created.

(5) The value of the collateral is to be analyzed periodically in order to reflect any changes in the volume of activity or in the level of excises owed.

(6) The collateral corresponding to the movement of the excisable products under a suspension regime performed by a registered consignor represents 100% of the value of the excises for the moved products, under the conditions provided by the methodological norms.

*) See [art. III](#) of Government Ordinance no. 30/2011, which is reproduced in note 10 at the end of the updated text.

ART. 206⁵⁵

Responsibilities of payers of excises

(1) Any payer of excises is liable for the correct calculation and the payment within the legal term of the excises to the state budget and for the submission within the legal term of the declarations of excises with the competent authority, as per the provisions of the present chapter and of those in the customs legislation in force.

(2) Warehouse-keepers authorized for production are bound to submit to the competent authority a report which should contain information regarding the excisable products: the stock of raw materials and finite products at the beginning of the reporting period, the purchases of raw materials, the quantity manufactured during the reporting period, the stock of finite products and raw materials at

the end of the reporting period and the quantity of products delivered, at the term and according to the model presented in the methodological norms.

(3) Warehouse-keepers authorized for storage are bound to submit to the competent authority a report which should contain information regarding the stock of finite products at the beginning of the reporting period, the purchases and deliveries of finite products during the reporting period, the stock of finite products at the end of the reporting period, at the term and according to the model presented in the methodological norms.

SECTION 13

Exemptions from payment of excises

ART. 206⁵⁶

General exemptions

(1) Excisable products are exempt from the payment of excises when intended for:

- a) delivery in the context of consular or diplomatic relations;
- b) international organizations recognized as such by the public authorities of Romania and by the members of said organizations, within the limits and under the conditions established by the international conventions on the creation of these organizations or through headquarters agreements;
- c) the armed forces of any state that is a member of the North Atlantic Treaty other than Romania for the use of the armed forces in questions, for the accompanying civil staff or for the supply of the mess halls or the canteens thereof;
- d) the armed forces of the United Kingdom stationed in Cyprus based on the Treaty of creation of the Republic of Cyprus of August 16, 1960, for the use of the armed forces in question, for the accompanying civil staff or for the supply of the mess halls or the canteens thereof;
- e) consumption based on an agreement concluded with third countries or international organizations, provided the agreement in question is allowed or authorized with respect to the exemption for payment of the value added tax.

(2) The manner and conditions of granting of the exemptions provided by par. (1) are to be regulated through the methodological norms.

(3) Notwithstanding the provisions under art. 206³¹ par. (1), excisable products that are moved under a suspension regime to a consignee within the meaning of par. (1) are accompanied by an exemption certificate.

(4) The model and content of the exemption certificate are those established by the European Commission.

(5) The procedure provided under art. 206³¹ - 206³⁶ does not apply to intra-Community movements of excisable products under a suspension regime dedicated to armed forces as provided by par. (1) letter c), if they are regulated by a regime which is based directly on the North Atlantic Treaty.

(6) By way of exception from the provisions under par. (5), the procedure provided by art. 206³¹ - 206³⁶ is to apply to movements of excisable products under a suspension regime dedicated to the armed forces provided under par. (1) letter c) which take place exclusively on national territory or based on an agreement concluded with another Member State, when the movement occurs between the national territory and the territory of that Member State.

ART. 206⁵⁷

Special exemptions

(1) Are exempt from the payment of excises the excisable products supplied by duty-free stores, transported in the personal luggage of the travelers who travel by air or sea to a third territory or a third country.

(2) Are exempt from payment of excises the excisable products supplied on board of an aircraft or a ship throughout the air or sea travel to a third territory or a third country.

(3) The regime of exemption from payment of excises provided under par. (1) is to apply to the excisable products supplied by duty-free stores authorized in Romania and located outside the airports or ports, transported in the personal luggage of the travelers to a third territory or a third country.

(4) For purposes of the present article, a traveler to a third territory to a third country means any traveler who holds a transport document for a travel or another document which proves the final destination located in a third territory or a third country.

(5) The manner and conditions of granting of exemptions provided by par. (1) - (3) are to be established through order of the minister of public finance, at the proposal of the chairman of the National Agency for Fiscal Administration.

ART. 206⁵⁸

Exemptions for ethyl alcohol and other alcohol products

(1) Ethyl alcohol and other alcohol products, as provided by art. 206² letter a) are exempt from the payment of excises if they are:

- a) completely denatured, as per legal provisions;
- b) denatured and used for production of products not intended for human consumption;
- c) used for the production of vinegar with N.C. code 2209;
- d) used for the production of medicines;
- e) used for the production of flavors, foodstuffs or non-alcoholic beverages that have a concentration of not more than 1.2% by volume;
- f) used for medical purposes in hospitals and pharmacies;
- g) used directly or as a component of semi-finished products for the production of foodstuffs with or without cream, provided that in each case the alcohol concentration does not exceed 8.5 liters of pure alcohol per 100 kilograms of product that enters into compositions of chocolate and 5 liters of pure alcohol per 100 kilograms of product that enters into the composition of other products;
- h) used in a production process, provided that the final product does not contain alcohol;
- i) samples for analysis or testing of necessary products or for scientific purposes.

(2) The method and conditions of granting the exemptions specified in par. (1), as well as the products used for the denaturing of alcohol, are to be regulated by the methodological norms.

ART. 206⁵⁹ *** Repealed

ART. 206⁶⁰

Exemption for mineral oils and electricity

(1) Exempt from the payment of excises are:

- a) mineral oils delivered for use as motor fuel for any aircraft other than private recreational aircraft. Private recreational aircraft means the use of an aircraft, by its owner or by the legal or physical person that uses it either through rental or through other means, for other than commercial purposes and in particular for other than the transport of passengers or goods or for the supply of services for consideration or for needs of the public authorities;
- b) mineral oils delivered for use as motor fuel for navigation in international waters and for navigation in interior waters, including for fishing, other than navigation by private recreational vessel. Electricity produced on board of ships is also exempt from payment of excises. Navigation by private recreational vessel means the use of any vessel, by its owner or by the legal or physical person that uses it either through rental or through other means, for other than commercial purposes and in particular for other than the transport of passengers or goods or for the supply of services for consideration or for needs of the public authorities;
- c) mineral oils and electricity used for production of electricity, as well as electricity used to maintain the capacity to produce electricity;
- d) mineral oils and electricity used for the combined production of electric and thermal energy;
- e) mineral oils – natural gas, coal and solid fuels – used in households and/or charitable organizations;
- f) fuels used in the field of production, development, testing and maintenance of aircrafts and ships;

- g) fuels used for dredging operations in navigable waterways and ports;
 - h) mineral oils injected in furnaces or other industrial equipment for chemical reduction, as additive to coke used a main fuel;
 - i) mineral oils that enter Romania from a third country in the standard tank of a motor vehicle and they are intended for use as motor fuel by such vehicle, as well as in special containers intended to be used for the operation, during transportation, of the systems corresponding to those containers;
 - j) any mineral oil that is removed from the state reserve or the mobilization reserve, being granted free of charge for purposes of humanitarian aid;
 - k) any mineral oil used as fuel for heating hospitals, sanatoriums, homes for the elderly, orphanages and other institutions of social assistance, educational institutions and places of worship;
 - l) mineral oils, if they are obtained from one or several of the following products:
 - products with N.C. code from 1507 to 1518, inclusive;
 - products with N.C. codes 3824 90 55 and from 3824 90 80 to 3824 90 99, inclusive, for their components produced from biomass;
 - products with N.C. codes 2207 20 00 and 2905 11 00, which are not of synthetic origin;
 - products obtained from biomass, including products with N.C. codes 4401 and 4402;
 - m) electricity obtained from renewable sources;
 - n) electricity obtained from electric batteries, mobile electric generator sets, electric installations placed on vehicles of any kind, stationary sources of electricity of continuous current, power plants placed in the territorial sea which are not connected to the electric network and electric sources with an active installed power below 250 kW;
 - o) products with N.C. code, used for heating.
- (2) The method and conditions for granting the exemptions specified in par. (1) are to be regulated by methodological norms.
- (3) *** Repealed

SECTION 14

Marking of alcohol products and tobacco products

ART. 206⁶¹

General rules

- (1) The provisions of the present chapter are to apply to the following excisable products:
- a) fermented beverages, other than beer and wines, intermediate products and ethyl alcohol, with the exceptions provided by the methodological norms;
 - b) tobacco products.
- (2) The marking obligation is not to apply to any excisable product that is exempt from the payment of excises.
- (3) The excisable products provided in par. (1) may be released for consumption or may be imported to the territory of Romania only if they are marked in conformity with the provisions of the present section.

ART. 206⁶²

Responsibility for marking

Authorized warehouse-keepers, registered consignees, registered consignors or authorized importers are responsible for the marking of excisable products, as provided by the methodological norms.

ART. 206⁶³

Marking procedures

- (1) The marking of products is to be effected by stamps or banderols.
- (2) The dimensions and elements that are to be written on the marks are to be established by the methodological norms.
- (3) The authorized warehouse-keeper, registered consignee, registered consignor or authorized importer is bound to make sure the marks are applied in a visible place on the individual package of

the excisable product, respectively on the pack, box or bottle, so that the opening of the package damages the mark.

(4) Excisable products that are marked with stamps or banderols that are damaged or that are marked other than as provided in par. (2) and (3) are to be considered as not marked.

ART. 206⁶⁴

Issuance of marks

(1) The competent authority approves the issuance of the marks, according to the procedure provided in the methodological norms.

(2) Marks are to be issued to:

a) authorized warehouse-keepers for the excisable products provided by art. 206⁶¹;

b) registered consignees that purchase the excisable products provided by art. 206⁶¹;

c) the authorized importer that imports the excisable products provided by art. 206⁶¹. The authorization of importer is granted by the competent authority, under the conditions provided by the methodological norms.

(3) Applicants for marks are to submit an application to the competent authority, under the conditions provided by the methodological norms.

(4) The issuance of marks is to be performed by the specialized unit authorized by the competent authority to print them, as per the provisions in the methodological norms.

(5) The counter-value of the marks is to be provided by the state budget, from the amount of excises related to the excisable products subject to marking, as per the provisions in the methodological norms.

SECTION 15

Other obligations for the economic agents with excisable products

ART. 206⁶⁵

Confiscation of tobacco products

(1) By derogation from the provisions in force that regulate the manner and the conditions of the sale of legally confiscated goods, or that enter, as provided by law, into the private ownership of the state, tobacco products that are confiscated or that enter, as provided by law, into the private ownership of the state are to be handed over by the organ that ordered the confiscation, for destruction, to the authorized warehouse-keeper for the production of the tobacco product, the authorized consignees, authorized consignors or authorized importers of such products, as follows:

a) brands that are registered in the nomenclature of products of authorized warehouse-keepers, authorized consignees, authorized consignors or authorized importers are to be handed over in full;

b) brands that are not registered in the nomenclature provided by letter a) are to be handed over in custody by the organs that have performed the confiscation, to the authorized warehouse-keepers for the production and storage of tobacco products, including to the affiliates thereof, whose market share is over 5 percent;

(2) The distribution of each lot of confiscated tobacco products, the taking over of such products by authorized warehouse-keepers authorized consignees, authorized consignors and authorized importers, as well as the destruction procedure are to be carried out according to the provisions in the methodological norms.

(3) Each authorized warehouse-keeper, authorized consignee, authorized consignor and authorized importer is required to ensure on his own expense, the taking into custody, the transport and the storage of such quantity of products from the confiscated lot that were distributed to such person.

ART. 206⁶⁶

Control

(1) All economic agents with excisable products are bound to accept any control which allows the competent authority provided in the methodological norms to make sure about the accuracy of the operations with excisable products.

(2) The competent authorities shall take fiscal surveillance and control measures to ensure that the authorized activity is performed according to law. The manners and procedures for the performance of the fiscal surveillance of the production, storage, circulation and import of products subject to harmonized excises are to be established by order of the chairman of the National Agency for Fiscal Administration.

ART. 206^67

Delays in payment of excises

The delay in payment of excises by more than 5 days as of the legal term triggers the suspension of the authorization held by the economic agent that is payer of excises until the payment of the outstanding amounts.

ART. 206^68

The import procedure for mineral oils

The border customs office established by order of the chairman of the National Agency for Fiscal Administration are to perform the customs formalities for import of petrol and gas oil.

ART. 206^69

Conditions for distribution and sale

(1) The sale on the national market of sanitary alcohol in bulk is forbidden.

(1^1) The sale in bulk and use as raw material of ethyl alcohol with an alcohol concentration below 96.00% by volume for the production of alcoholic beverages is forbidden.

(2) Economic agents that want to distribute and sell alcoholic beverages and tobacco products in bulk are bound to register with the competent authority provided in the methodological norms and fulfill the following conditions:

a) have adequate storage spaces in their ownership, or leased, under a bailment agreement or under any other legal title;

b) to have the activity of sale and distribution of alcoholic beverages in bulk and that of sale and distribution of tobacco products in bulk registered in their object of activity, according to the National Classification of Economic Activities – CAEN, approved by Government Decision no. 656/1997, as subsequently amended;

c) to acquire the means necessary to unveil false or counterfeit marks, if they trade in products subject to marking as per the provisions of the present chapter.

(3) Alcoholic beverages delivered by economic agents that produce them to economic agents that distribute them or sell them in bulk are to be accompanied by a copy of the producer's mark certificate which should prove that the mark belongs to said producer.

(4) Economic agents that intend to sell mineral oils in bulk – petrol, gas oils, kerosene and liquefied petroleum gas – are bound to register with the competent authority according to the procedure and based on the fulfillment of the conditions set through order of the chairman of the National Agency for Fiscal Administration.

(5) Authorized warehouse-keepers for the places authorized as fiscal warehouses and registered agents/registered consignees do not fall under the provisions of par. (2) and (4).

(6) Economic agents that intend to retail sell mineral oils - petrol, gas oils, kerosene and liquefied petroleum gas – are bound to register with the competent authority, according to the procedure and based on the fulfillment of the conditions set through order of the chairman of the National Agency for Fiscal Administration.

(7) *** Repealed

(8) Economic agents that are distributors and sellers of alcoholic beverages, tobacco products and mineral oils, either in bulk or retail, are liable if the origin of the products they hold is unlawful.

(9) All residues of mineral oils resulting from the exploitation thereof in other places than fiscal warehouses can be assigned or sold for processing in order to obtain excisable products only to a fiscal warehouse of production or they can be subject to operations of greening, under the conditions provided by the methodological norms.

(10) In case of selling and transportation of unprocessed tobacco and partially processed tobacco, the following requirements must be met:

- a) economic agents that want to sell unprocessed tobacco or partially processed tobacco obtained from import operations, own intra-Community acquisition or own internal production may perform this activity only based on an authorization issued for this purpose by the competent authority;
- b) unprocessed tobacco or partially processed tobacco can be sold to an economic agent in Romania only if said operator is an authorized warehouse-keeper for the production of tobacco products and the tobacco is dispatched directly to the fiscal warehouse thereof;
- c) any movement of unprocessed tobacco or partially processed tobacco on Romanian territory performed by the economic agents provided under letter a), must be accompanied by a commercial document mentioning the number of the economic agent's authorization.
- (11) When any of the provisions of par. (10) is not observed, the excises become chargeable and the amount to pay is to be determined based on the excise owed for other smoking tobacco.
- (12) The procedure for issuance of the authorization provided under par. (10) letter a) is to be established through order of the chairman of the National Agency of Fiscal Administration.
- (13) Except for the situations provided by law, it is forbidden to the producers, importers, economic agents performing intra-Community purchases or the persons that sell excisable products under any form, to use selling prices that are lower than the costs determined by the production, import or sale of the excisable products, to which the excise and the value added tax is added.

ART. 206⁷⁰

Circulation of the excisable products entered under the law in the private ownership of the state or which are the object of a forced execution procedure

The circulation of the excisable products entered, under the law, in the private ownership of the state or which form the object of a forced execution procedure is not subject to the provisions of section 9 of the present chapter.

ART. 206⁷¹

Exemptions for tobacco products

- (1) Tobacco products, when intended exclusively for scientific tests and those related to product quality is to be exempt from payment of excises.
- (2) The manners and conditions of granting the exemptions provided by par. (1) are to be regulated by the methodological norms.

CAPITOLUL II

Other excisable products

ART. 207

Scope of application

The following products are subject to excises:

- a) green coffee within C.N. Codes 0901 11 00 and 0901 12 00;
- b) roasted coffee, including coffee with substitutes, within C.N. Codes 0901 21 00, 0901 22 00 and 0901 90 90;
- c) soluble coffee, including blends with soluble coffee, within C.N. Codes 2101 11 and 2101 12.

ART. 208

Level and computation of excises

- (1) The level of the excises for the products provided by art. 207 is mentioned in appendix no. 2, which is an integral part of the present title.
- (2) For coffee, coffee with substitutes and soluble coffee, the excises are owed once and computed by applying the fixed amounts on the measurement unit on the quantities that enter the territory of Romania. For blends with soluble coffee entering the territory of Romania, the excises are owed and computed only for the quantity of soluble coffee contained in the blends.

ART. 209

Payers of excises

- (1) Payers of excises for products provided in art. 207 are economic agents – legal persons, family associations and authorized physical persons – that produce or import such products.

(2) Economic agents that purchase from the Community territory the products provided under art. 207, must be registered with the competent authority as per the conditions provided by the methodological norms before receiving the products and must observe the following conditions:

- a) secure the payment of excises under the conditions established by the competent authority;
- b) keep the accounting records of the product deliveries;
- c) present the products anytime this is requested by the control bodies;
- d) accept any monitoring or checking of the stock.

ART. 210

Exemptions

(1) Are exempt from payment of excises the products delivered to the state reserve or the mobilization reserve for the period they are under such regime.

(2) Economic agents that export or deliver to another Member State brands of coffee obtained from own operations of processing of coffee purchased directly by them from other Member States or from import may request to the competent fiscal authorities, based on supporting documents, to be returned the excises paid to the state budget and corresponding to the quantities of coffee used as raw material for the coffee exported or delivered to another Member State.

(3) Economic agents also benefit from the regime of return of the excises paid to the state budget for the quantities of coffee purchased directly by them from another Member State or from import and which are subsequently delivered to another Member State, are exported or returned to the suppliers.

(4) The manner of granting of exemptions provided under par. (1) - (3) is to be regulated through the methodological norms.

ART. 211

Chargeability

The moment of chargeability of excises occurs:

- a) for products coming from the Community territory, at the time of receipt thereof;
- b) for the imported products, at the date of registration of the customs declaration of import.

ART. 212

Chargeability of the excise in the case of the simplified customs procedure

In the case of products coming from import operations performed by an importer with a single authorization for simplified customs procedures issued by another Member State, said importer is bound to submit to the customs authority the import declaration for VAT and excises. The chargeability of the excise arises on the date of registration of the import declaration of VAT and excises.

ART. 213

Payment of excises to the state budget

(1) For products coming from the Community territory, the payment of excises is to be made on the business day immediately following the one in which the products were received.

(2) For products coming from import operations, the payment of excises is made at the time of registration of the customs declaration of import.

ART. 214

Declarations of excises

(1) Any economic operator payer of excises is bound to submit to the competent authority a declaration of excises for each month, regardless whether the excise is payable for such month.

(2) The declarations of excises are to be submitted to the competent authority by the corresponding economic agents or on before the 25th of the month that follows the month to which the declaration refers.

ART. 214¹ *** Repealed

ART. 214² *** Repealed

ART. 214³ *** Repealed

CHAPTER III

Tax on oil from domestic production

ART. 215

General provisions

(1) For oil from domestic production, the economic agents authorized by law owe a tax to the state budget at the moment of delivery.

(2) The tax owed for oil is of EUR 4/ton.

(3) The tax owed is computed by applying the fixed amount specified by par. (2) on the delivered quantities.

(4) The time of chargeability of the tax on oil from domestic production is the date of performance of the delivery thereof.

ART. 216

Exemptions

Are exempt from payment of these taxes the quantities of oil and natural gas from domestic production which are exported directly by the economic agents producing them.

ART. 217

Tax declarations

(1) Any economic agent payer of the tax on oil from domestic production is required to submit to the competent fiscal authority a tax declaration for each month, regardless whether tax is payable for such month.

(2) The tax declarations are to be submitted to the competent fiscal authority by the economic agent payer on or before the 25th of the month that follows the month to which the declaration refers.

CHAPTER IV

Common provisions

ART. 218

Conversion to Lei of the amounts expressed in EUR

The value in Lei of the excises and of the tax on oil from domestic production owed to the state budget established as per the present title in EUR equivalent per measurement unit, is to be determined by converting the amounts expressed in EUR equivalent based on the currency exchange established on the first business day of the month of October of the previous year and published in the Official Journal of the European Union.

ART. 219

Obligations of payers

(1) Economic agents that are payers of excises and the tax on oil from domestic production are required to register with the competent fiscal authority, according to legal provisions on this matter.

(2) Economic agents are required to compute the excises and the tax on oil from domestic production, as the case may be, to record them distinctly in the invoice, and to remit them to the state budget by the established term, being responsible for the correct computation and full remittance of the amounts payable.

(3) Payers are required to maintain records of excises and taxes on oil from domestic production, as applicable, according to the provisions in the norms and to submit on annual basis the settlements

related to excises and tax on oil from domestic production, as per the legal provisions regarding payment liabilities to the state budget, by April 30th of the year following the reporting year.

ART. 220

Settlements between economic agents

(1) Settlements made between economic agents payers of excises and economic agents that are purchasers of excisable products are to be made entirely through banking units.

(2) The provisions of par. (1) are not to include:

a) deliveries of products subject to excises to economic agents that sell such products in a retail system;

b) deliveries of products subject to excises, effectuated within a system of offsetting debts to the state budget, approved by special legislative acts. The amounts representing excises may not be subject to offset unless provided differently by special legislative acts or the payment thereof to the state budget is proved;

c) deliveries of excisable products, in case of offsetting made between economic agents through the Institute of Management and Information, as per the legal provisions in force. The amounts representing excises may not be the object of offsetting if the excises are not proven to have been paid to the state budget.

ART. 220¹

Regime of excisable products held by economic agents that register outstanding fiscal liabilities

(1) Excisable products held by economic agents that register outstanding fiscal liabilities can be capitalized within the procedure of forced execution by the competent bodies, under the law.

(2) The persons that acquire excisable goods through capitalization, according to par. (1), must fulfill the requirements provided by law, as applicable.

CAPITOLUL V

Transitory provisions and derogations

ART. 220²

The minimum excise for cigarettes

The minimum excise for cigarettes, in force as of December 31, 2006, and established according to the provisions of art. 177, is to apply until January 15, 2007.

ART. 221 *** Repealed

ART. 221¹

Derogation for motor vehicles

By way of derogation from the provisions of art. 214², for motor vehicles and other goods subject to excises which are introduced in Romania based on leasing contracts started before the entry into force of the provisions of the present title and the conclusion of which is to be performed after such date, the amounts computed according to the level of the excises in force at the time of starting the leasing contract are to be owed to the state budget.

ART. 221² *** Repealed

CHAPTER VI

Civil violations and sanctions

ART. 221³

Civil violations and sanctions

(1) Shall be civil violations sanctioned by fine between Lei 2,000 and Lei 5,000 the following deeds:

a) failure to submit within the terms provided by law the reportings regulated by the present title;

b) failure to inform the competent authority within the legal term provided by the present title about the amendments brought to the initial data based on which the authorization was issued;

- c) change of destination of the excisable products moved under a suspension regime by failing to observe the conditions provided by law;
- d) refusal of the economic agents to take over and destroy the confiscated quantities of tobacco products, under the conditions provided by the present title;
- e) failure to return for destruction purposes the marks not used within the term provided by the present title to the specialized unit for printing thereof;
- f) failure to observe the obligations provided by art. 206²⁶ par. (1) letters f) and i).

(2) The following deeds are civil offences:

- a) holding of excisable products outside a suspension regime for which the excises were not charged according to the present title;
- b) holding outside the fiscal warehouse or selling on the territory of Romania of excisable products subject to marking, as per the provisions of the present title, without being marked or being inadequately marked or with false marks below the limits provided by art. 296¹ par. (1) letter l) in title IX¹;
- c) practicing, except for the situations provided by law, by producers, importers, economic agents that perform intra-Community acquisition or by the persons that sell under any form, of selling prices lower than the costs determined by the production, import or sale of the excisable products sold, to which the excise and the value added tax are added, if the deed is was not committed so as to represent a criminal violation;
- d) failure to register distinctly in the invoices and waybills the excises or the tax on oil from domestic production, in the cases provided by the present title;
- e) failure to use the fiscal documents provided by the present title;
- f) failure to perform, through banking units, the settlements between the economic agents payers of excises and the economic agents purchasers of excisable products, as legal persons that perform operations with excisable products, with the exceptions provided by the present title;
- g) placement of the means of measurement of production and alcohol concentration for ethyl alcohol and distilled beverages in other places than those expressly provided by the present title;
- h) failure to notify the competent authority in case of damages to the seals applied by such authority;
- i) transportation of excisable products under a suspension regime which is not covered by the electronic administrative document or, as applicable, by another document used for this regime and provided by the present title or by failing to observe the appropriate procedure if the computerized system is unavailable at dispatch;
- j) receipt of the excisable products under a suspension regime by failing to observe the requirements provided by the present title;
- k) selling in bulk and use as raw material for the production of alcoholic beverages of ethyl alcohol with an alcohol concentration below 96.00% by volume;
- l) production of sanitary alcohol by other persons than warehouse-keepers authorized for production of ethyl alcohol;
- m) denaturation of ethyl alcohol and of other alcohol products by failing to observe the conditions and provisions of the present title;
- n) selling sanitary alcohol in bulk on the domestic market;
- o) circulation and selling in bulk of refined ethyl alcohol and of distilled products for other purposes than those expressly provided by the present title;
- p) failure to observe the procedure related to the sealing and unsealing of the installations of production of alcohol and distilled products as provided by the present title;
- q) selling of cigarettes by any person for a price exceeding the declared retail price;
- r) selling by any person of cigarettes for which no retail price was established and declared;
- s) performance of distribution and wholesale activities related to alcoholic beverages and tobacco products by failing to observe the obligations and conditions provided by the present title;

§) performance of wholesale and/or retail activities of mineral oils – petrol, gas oils, kerosene and liquefied petroleum gas – by failing to observe the obligations provided in this respect by the present title;

t) selling, through the pumps of the distribution stations, of other mineral oils than those in the category of liquefied petroleum gas, petrol and gas oils, as well as of biofuels corresponding to national quality standards;

‡) capitalization of the excisable products in a fiscal warehouse for which the authorization was revoked or cancelled, by failing to notify the competent authority with respect to the transfer of excises to the state budget;

u) retail of excisable products from a fiscal warehouse, with the exceptions provided by law;

v) purchase of excisable products from persons that carry out activities of distribution and wholesale of alcoholic beverages and tobacco products, respectively wholesale of mineral oils - petrol, gas oils, kerosene and liquefied petroleum gas – and fail to observe the conditions or obligations provided by art. 206⁶⁹ par. (2) and (4) of the present title, as applicable;

w) holding for commercial purposes, by failing to observe the requirements of the present title, of excisable products that have already been released for consumption in another Member State.

(3) The civil violations provided under par. (2) are sanctioned by fine between Lei 20,000 and Lei 100,000, as well as by:

a) confiscation of the products and, if they were sold, confiscation of the proceeds of the sale, in the cases provided by letter a), b), c), e), i), j), k), l), m), n), o), r), s), §), t), ‡), u) and w);

b) confiscation of the tankers, recipients and means of transport used to transport the excisable products, for the case provided by letter i);

c) suspension of the activity of trading of excisable products for a term of 1 to 3 months for the wholesale and/or retail traders and for the cases provided by letter b), s), §) and t);

d) stopping the production activity of excisable products by sealing the installation in the case of producers and for the situations provided by h), n), o) and p).

(4) At the proposal of the control body the competent authority may suspend the authorization of fiscal warehouses, registered consignees, registered consignors or authorized importers, as applicable, for the cases provided by par. (1) letter d) and par. (2) letter g), h), m), n), o) and p).

(5) At the proposal of the control body, the competent authority may revoke the authorization of fiscal warehouses, registered consignees, and registered consignors or authorized importers, as applicable, for the cases provided under par. (1) letter b) and f), as well as under par. (2) letter u).

ART. 221⁴

Ascertaining of the civil violations and enforcement of the sanctions

(1) The ascertaining and sanctioning of the deeds which represent civil violations as per art. 221³ is to be made by the competent bodies of the Ministry of Public Finance, through the National Agency for Fiscal Administration and its subordinated units, except for the sanctions related to the suspension or revocation of the authorization of fiscal warehouses, registered consignees, registered consignors or authorized importers, as such is to be ordered by the competent authority at the proposal of the control body.

(2) The sanctions for civil violations provided by 221³ are to be applied, as the case may be, to physical or legal persons. In case of associations and other entities without legal personality, the sanctions are to be applied to the representatives thereof.

(3) The author of the civil violation may pay, on the spot or within at most 48 hours as of the date of conclusion of the report or, as applicable, as of the date of communication thereof, half of the minimum fine provided by art. 221³, and the inspector shall make mention of this possibility in the report.

ART. 221⁵

Applicable provisions

The civil violations provided by art. 221³ shall be subject to the provisions of Government Ordinance no. 2/2001 on the legal regime of civil violations, approved as subsequently amended and supplemented through Law no. 180/2002, as subsequently amended and supplemented.

APPENDIX 1

No.	Name of the product or group of products (EUR equivalent /M.U.)	M.U.	Excise
0	1 2 3		
Alcohol and alcoholic beverages			
1	Beer hl/1 Plato degree*1)	0.748	
out of which:			
1.1.	Beer produced by small independent producers	0.43	
2	Wines hl of product		
2.1.	Still wines	0.00	
2.2.	Sparkling wines	34.05	
3	Fermented beverages, other than beer and wines hl of product		
3.1.	still	100.00	
3.2.	sparkling	45.00	
4	Intermediate products hl of product	165.00	
5	Ethyl alcohol hl of pure alcohol*2)	750.00	
5.1.	Ethyl alcohol produced by small distilleries	475.00	
Tobacco products			
6	Cigarettes 1,000 cigarettes	48.50 + 22%*	
7	Cigarettes and cigarillos 1,000 pieces	64.00	
8	Fine-cut smoking tobacco intended for cigarette rolls	81.00	
9	Other smoking tobacco	81.00	
Mineral oils			
10	Leaded petrol	547.00	

		1,000 liters	421.19	
11	Unleaded petrol	ton	467.00	
		1,000 liters	359.59	
12	Gas oil	ton	374.00	
		1,000 liters	316.03	
13	Crude oil	1,000 kg		
	13.1. used for commercial purposes		15.00	
	13.2. used for non-commercial purposes		15.00	
14	Liquefied petroleum gas	1,000 kg		
	14.1. used as motor fuel		128.26	
	14.2. used as fuel for heating		113.50	
	14.3. used for household consumption *3)		0.00	
15	Natural gas	GJ		
	15.1. used as motor fuel		2.60	
	15.2. used as fuel for heating			
	15.2.1. for commercial purposes		0.17	
	15.2.2. for non-commercial purposes		0.32	
16	Kerosene*4)			
	16.1. used as motor fuel	ton	469.89	
		1,000 liters	375.91	
	16.2. used as fuel for heating	ton	469.89	
		1,000 liters	375.91	
17	Coal and coke	GJ		

17.1. used for commercial purposes	0.15		
17.2. used for non-commercial purposes	0.30		
18 Electricity MWh			
18.1. used for commercial purposes	0.50		
18.2. used for non-commercial purposes	1.00		

*) This structure of the excise is to apply until June 30, 2011, inclusive. During the period July 1, 2011 and December 31, 2017, inclusive, the structure of the total excise is to be provided by the Government decision for approval of the specific excise that is to be applied as of July 1st of each year.

*1) The Plato degree is the weight of sugar expressed in grams and contained in 100 g of solution measured at origin at the temperature of 20°/4 °C.

*2) Hl of pure alcohol means 100 liters of refined ethyl alcohol with a concentration of 100% alcohol by volume, at the temperature of 20 °C and contained in a given quantity of alcoholic product.

*3) Liquefied petroleum gas used for household consumption means the liquefied petroleum gas distributed through gas tanks of gas burner type. Such gas tanks are those with a capacity of up to maximum 12.5 kg.

*4) Kerosene used as fuel by physical persons is not subject to excises.

APPENDIX 2

No.	Name of the product or group of products	Excise	
		- EUR/ton -	
1.	Green coffee	153	
2.	Roasted coffee, including coffee with substitutes	225	
3.	Soluble coffee	900	

APPENDIX 3 *** Repealed

APPENDIX 4*)

*) Appendix no. 4 is reproduced in facsimile.

Pollution norm or type of motor vehicle/vehicle	Cylinder capacity (ccm)	Euro/1 ccm	
1 2 3			
Hybrids	0		
Euro4	< 1600	0.15	

1601 - 2000 0.35		
2001 - 2500 0.5		
2501 - 3000 0.7		
> 3000 1		
Euro3 < 1600 0.5		
1601 - 2000 0.6		
2001 - 2500 0.9		
2501 - 3000 1.1		
> 3000 1.3		
Euro2 < 1600 1.3		
1601 - 2000 1.4		
2001 - 2500 1.5		
2501 - 3000 1.6		
> 3000 1.7		
Euro1 < 1600 1.8		
1601 - 2000 1.8		
2001 - 2500 1.8		
2501 - 3000 1.8		
> 3000 1.8		
Non-Euro < 1600 2		
1601 - 2000 2		
> 2001 2		

APPENDIX 4.1

LEVEL
of the special fee for the motor vehicles in categories *) N2, N3, M2 and M3

Pollution norm Euro/1 ccm
of the motor vehicle

Euro 4 0
Euro 3 0
Euro 2 0.2
Euro 1 0.9
Non-Euro 1.2

*) The categories are defined in the Regulations regarding the type homologation and the issuance of the vehicle registration document, as well as the type homologation of the products used thereto - RNTR2.

ANEXA 5*)

*) Appendix no. 5 is reproduced in facsimile.

Age of the motor vehicle / vehicle	Correlation coefficient	Reduction (%)
1 2 3		
up to 1 year, inclusive	0.9	15
between 1 and 2 years, inclusive	1.8	25
between 2 and 4 years, inclusive	2.3	32
between 4 and 6 years, inclusive	2.5	43
over 6 years	2.7	47

APPENDIX 6

Date of implementation	2011	2012	2013	2014	2015	2016	2017	2018
	1	1	1	1	1	1	1	1
	January	July	July	July	July	July	July	January
	1	2	3	4	5	6	7	8
	9	10						
Minimum excise (EUR/1,000 cigarettes)	73.54	74.00	76.50	79.00	81.50	84.00	86.50	89.00
	90.00							
Excise ad valorem	22	21	20	19	18	17	16	15
	14							

%										
Total excise	76.60	76.60	79.19	81.78	84.37	86.96	89.55	92.14	93.18	
(EUR/1,000 cigarettes)										
Specific excise	48.50	X*1)	X*1)	X*1)	X*1)	X*1)	X*1)	X*1)	X*1)	
(EUR/1,000 cigarettes)										

*1) Is to be determined according to the average weighted retail price corresponding to the previous year, the excise ad valorem and the total excise.

TITLE IX¹ Criminal offences

ART. 296¹

(1) The following deeds shall be deemed criminal offences:

a) *** Repealed

b) the production of excisable products which fall under the warehousing regime provided under title VII outside of a fiscal warehouse authorized by the competent authority;

c) the acquisition of ethyl alcohol and distilled products in bulk from other suppliers than warehouse-keepers authorized for production or registered dispatchers of such products, as per title VII;

d) *** Repealed

e) *** Repealed

f) delivery of the mineral oils provided under art. 206¹⁶ par. (3) letters a) - e) from fiscal warehouses to purchasers who are legal persons, if the dispatcher fiscal warehouse does not have the payment document which certifies the transfer to the state budget of the value of the excises corresponding to the quantity to be invoiced;

g) *** Repealed.

h) marking with false marks of the excisable products subject to marking or holding in the fiscal warehouse of products marked in this way;

i) refusing in any form the access of the competent authorities with prerogatives of control for performance of unforeseen checks in the fiscal warehouses.

j) delivery of residues of mineral oils for processing thereof in order to obtain excisable products, other than as provided under title VII;

k) acquisition of residues of mineral oils for processing thereof in order to obtain excisable products, other than as provided under title VII;

l) holding by any person outside the fiscal warehouse or selling on Romanian territory of excisable products subject to marking as per title VII without being marked or inadequately marked or with false marks, over the limit of 10,000 cigarettes, 400 cigars of 3 grams, 200 cigars over 3 grams, over 1 kg of smoking tobacco, ethyl alcohol over 40 litres, spirits over 200 litres, intermediate alcohol products over 300 litres, fermented beverages, other than beer and wines, over 300 litres;

m) use of mobile pipes, elastic hoses or other pipes of this kind, use of non-calibrated tanks, as well as placement before the meters of canes or taps through which unmetered quantities of alcohol or distilled products can be extracted.

(2) The crimes provided under par. (1) are punished as follows:

a) by imprisonment between one and 4 years those provided under letters c), i), l) and m);

b) by imprisonment between 2 and 7 years those provided under letters b), f) and h);

c) by imprisonment between 6 months and 2 years those provided under letters j) and k).

(3) After the deeds provided under par. (1) letters c) – i) and k) are ascertained, the competent control body shall order that the activity be stopped, and the installation sealed as per the technological procedures for closing the installation and shall submit the control document to the fiscal authority that issued the authorization, with proposal of suspension of the fiscal warehouse authorization.

TITLE X

Final provisions

ART. 297

Date of entry into force of the Fiscal Code

The present code enters into force on January 1, 2004, with the exception of cases in which the present code provides otherwise.

ART. 298

Repeal of normative acts

(1) On the date of the entry into force of the present fiscal code, the following provisions are repealed:

1. Article 73 of Law no. 64/1991, as regards patents, republished in the Official Gazette of Romania, Part I, no. 752 of October 15, 2002;
2. Article 17 of Law on apiculture no. 89/1998, published in the Official Gazette of Romania, Part I, no. 170 of April 30, 1998, as subsequently amended;
3. Article 13 and article 14 of Law no. 332/2001, as regards the promotion of direct investments with significant impact on the economy, published in the Official Gazette of Romania, Part I, no. 356 of July 3, 2001, as subsequently amended;
4. Paragraph (3) of article 17 of the Law on owners associations no. 356/2001*1), published in the Official Gazette of Romania, Part I, no. 380 of July 12;
5. Paragraph (2) of art. 41 of Law no. 422/2001, as regards the protection of historical monuments published in the Official Gazette of Romania, Part I, no. 407 of July 24, 2001;
6. The provisions referring to excises in Law no. 423/2001, for the support of the fishing section of the Black Sea, published in the Official Gazette of Romania, Part 1, no. 406 of July 23, 2001;
7. Paragraph (8) of article 70 of Library Law no. 334/2002, published in the Official Gazette of Romania, Part I, no. 422 of June 18, 2002;
8. Law no. 345/2002, as regards the value-added tax, republished in the Official Gazette of Romania, Part I, no. 653 of September 15, 2003;
9. Article 67 of Law no. 346/2002, as regards insurance against labor accidents and professional illness, published in the Official Gazette of Romania, Part I, no. 454 of June 27, 2002, as subsequently amended and supplemented;
10. Law no. 414/2002, as regards the corporate tax, published in the Official Gazette of Romania, Part I, no. 456 of June 27, 2002, as subsequently amended and supplemented, including the normative acts issued for the application of the law;
11. Law no. 521/2002, as regards the regime of supervision and authorization of products, the import and circulation of products subject to excises, published in the Official Gazette of Romania, Part 1, no. 571 of August 2, 2002, as subsequently amended and supplemented;
12. Letters b) and c) of article 37 of Law on cinematography no. 630/2002*2), published in the Official Gazette of Romania, Part I, no. 889 of December 9, 2002, as subsequently amended and supplemented;
13. Government Ordinance no. 22/1993, as regards exemption from the payment of tax for incomes realized by foreign consultants for activities carried out in Romania within the framework of international governmental agreements or international non-governmental

agreements of free financing, published in the Official Gazette of Romania, Part I, no. 209 of August 30, 1993, approved by Law no. 102/1994;

14. Government Ordinance no. 23/1995, as regards the institution of the system of marks for cigarettes, tobacco products and alcoholic beverages, republished in the Official Gazette of Romania, Part 1, no. 374 of December 23, 1997, as subsequently amended and supplemented;

15. Government Ordinance no. 26/1995, as regards the tax on dividends, published in the Official Gazette of Romania, Part I, no. 201 of August 30, 1995, approved as amended by Law no. 101/1995, as subsequently amended;

16. Government Ordinance no. 24/1996, as regards the tax on incomes of representative offices in Romania of foreign companies and economic organizations, published in the Official Gazette of Romania, Part I, no. 175 of August 5, 1996, approved as amended by Law no. 29/1997, as subsequently amended;

17. The provisions regarding the profit tax in article 47 of Government Ordinance no. 39/1996, as regards the establishment and operation of the guarantee fund for deposits in the banking system, republished in the Official Gazette of Romania, Part I, no. 141 of February 25, 2002;

18. Letters e) and f) of article 2 of Government Ordinance no. 51/1997, as regards leasing operations and leasing companies, republished in the Official Gazette of Romania, Part I, no. 9 of January 12, 2000;

19. Article 6, article 7, and paragraph (1) of article 10 of Government Ordinance no. 46/1998, as regards the establishment of measures in view of satisfying the obligations assumed by Romania by joining the international convention EUROCONTROL, as regards cooperation for flight safety and the multilateral agreement regarding flight tariffs, republished in the Official Gazette of Romania, Part I, no. 44 of January 26, 2001;

20. Government Ordinance no. 83/1998, as regards the tax on incomes realized from Romania by non-resident physical and legal persons, published in the Official Gazette of Romania, Part I, no. 315 of August 27, 1998, as subsequently amended;

21. The provisions referring to legal persons in paragraph (2) of article 9 of Government Ordinance no. 124/1998, as regards the organization and operation of medical offices, republished in the Official Gazette of Romania, Part I, no. 568 of August 1, 2002, as subsequently amended;

22. Paragraph (4) of article 12 of Government Ordinance no. 112/1999, as regards travel for free for job purposes and for personal purposes by means of the Romanian railway system, published in the Official Gazette of Romania, Part I, no. 425 of August 31, 1999, approved as amended and supplemented by Law no. 210/2003;

23. Paragraph (1) and (2) of article 6 and article 8 of Government Ordinance no. 126/2000, as regards the continuation of the realization of Unit 2 of investment objective "Centrala Nuclearoelectrica Cernavoda – 5 x 700 Mwe", published in the Official Gazette of Romania, Part I, no. 430 of September 2, 2000, approved as amended and supplemented by Law no. 335/2001, as subsequently amended and supplemented;

24. Government Ordinance no. 7/2001, as regards the income tax, published in the Official Gazette of Romania, Part I, no. 435 of August 3, 2001, approved as amended and supplemented by Law no. 493/2002, as subsequently amended and supplemented;

25. Government Ordinance no. 24/2001, as regards the taxation of micro-enterprises, published in the Official Gazette of Romania, Part I, no. 472 of August 17, 2001, approved as amended by Law no. 111/2003, as subsequently amended and supplemented;

26. Letters b) and c) of article 7 of Government Ordinance no. 65/2001, as regards the establishment and operation of industrial parks, published in the Official Gazette of Romania, Part I, no. 536 of September 1, 2001, approved as amended by Law no. 490/2002;
27. Government Ordinance no. 36/2002, as regards local taxes and fees, republished in the Official Gazette of Romania, Part I, no. 670 of September 10, 2002, as subsequently amended and supplemented;
28. Article 162 of Government Ordinance no. 39/2003*3), as regards the procedure of the administration of debts of the local budget, published in the Official Gazette of Romania, Part I, no. 66 of February 2, 2003, approved as amended and supplemented by Law no. 358/2003;
29. Section 2 of chapter I of Government Ordinance no. 86/2003, as regards the regulation of measures in financial-fiscal matters, published in the Official Gazette of Romania, Part I, no. 624 of August 31, 2003;
30. Government Emergency Ordinance no. 66/1997, as regards exemption from the payment of the tax on salaries and/or incomes realized by foreign consultants for activities carried out in Romania in the framework of loan agreements, published in the Official Gazette of Romania, Part I, no. 294 of October 29, 1997, as subsequently amended and supplemented;
31. The provisions referring to the value-added tax in art. 7 of Government Emergency Ordinance no. 73/1999, for the approval of the continuation of works and financing of the investment objective "Development and Modernization of International Airport "Bucuresti-Otopeni" and for the approval of guarantee of a credit in favor of national company "International Airport Bucuresti-Otopeni" - S.A., published in the Official Gazette of Romania, Part I, no. 232 of May 25, 1999, as approved by Law no. 21/2000;
32. Letter a) of paragraph (1) of article 38 of Government Emergency Ordinance no. 102/1999*4), as regards the special protection and employment of handicapped persons, published in the Official Gazette of Romania, Part I, no. 310 of June 30, 1999, approved as amended and supplemented by Law no. 519/2002, as subsequently amended;
33. Letters b) and c) of article 1 of Government Emergency Ordinance no. 160/1999, as regards the establishment of measures to stimulate the activity of owners of petroleum agreements and their sub-contractors that carry out petroleum operations in maritime areas which include zones with a water depth of more than 100 meters, published in the Official Gazette of Romania, Part I, no. 526 of October 28, 1999, approved as amended by Law no. 399/2001;
34. Article 2 of Government Emergency Ordinance no. 50/2000, for the repeal of Government Emergency Ordinance no. 67/1999, as regards certain measures for the development of economic activity, published in the Official Gazette of Romania, Part I, no. 208 of May 12, 2000, approved by Law no. 302/2001, as subsequently amended;
35. Article 20 of Government Emergency Ordinance no. 97/2000*5), as regards credit co-operative organizations, published in the Official Gazette of Romania, Part I, no. 330 of July 14, 2000, approved as amended and supplemented by Law no. 200/2002;
36. Government Emergency Ordinance no. 208/2000, as regards the exemption from value-added tax for deliveries of goods and/or supplies of services provided in the appendix to Government Decision no. 211/2000, as regards the Ministry of Finance guarantee of external loans for the Ministry of National Defense, published in the Official Gazette of Romania, Part I, no. 594 of November 22, 2000, approved by Law no. 134/2001;

37. Paragraph (2) of article 1 of Government Emergency Ordinance no. 249/2000, as regards the establishment and the use of the Special Fund for Petroleum Products, published in the Official Gazette of Romania, Part I, no. 647 of December 12, 2000, approved as amended and supplemented by Law no. 382/2002, as subsequently amended;
38. Article 16 of Government Emergency Ordinance no. 119/2001, as regards certain measures to privatize Company Combinatul Siderurgic "Sidex" – S.A. Galati, published in the Official Gazette of Romania, Part I, no. 627 of October 5, 2001, as subsequently amended and supplemented;
39. Government Emergency Ordinance no. 158/2001, as regards the excise regime, published in the Official Gazette of Romania, Part 1, no. 767 of November 30, 2001, approved as amended and supplemented by Law no. 523/2002, as subsequently amended and supplemented;
40. The provisions referring to the profit tax in paragraph (3) of article 145 and paragraph (2) of article 146 of Government Emergency Ordinance no. 28/2002*6), as regards securities, financial investment services and regulated markets, published in the Official Gazette of Romania, Part 1, no. 238 of April 9, 2002, approved with as amended and supplemented by Law no. 525/2002, as subsequently amended;
41. Government Emergency Ordinance no. 12/2003, as regards the exemption from the payment of tax of lands outside the built-up area of localities, published in the Official Gazette of Romania, Part I, no. 167 of March 17, 2003, approved as amended by Law no. 273/2003;
42. Emergency Ordinance no. 30/2003, for the institution of certain special measures regarding the production, import and trade of mineral oils, published in the Official Gazette of Romania, Part 1, no. 294 of April 25, 2003, as subsequently amended;
43. Government Decision no. 582/1997, as regards the introduction of the system of marks for alcoholic beverages, published in the Official Gazette of Romania, Part 1, no. 268 of October 7, 1997, as subsequently amended and supplemented;

43^1. * Repealed**

- 43^2. Letter a) of article 26 and letter g) of article 83 in Law no. 448/2006 on the protection and promotion of rights of handicapped persons, republished, as subsequently amended and supplemented;
- 43^3. Article III in Law no. 265/2007 on the amendment and supplementation of Law no. 38/2003 on transport under taxi regime and lease regime, as subsequently amended and supplemented;
44. Any other provision contrary to the present code.

(2) * Repealed**

- *1)** Law no. 356/2001 was repealed through Law no. 62/2011.
- *2)** Law no. 630/2002 was repealed through Government Ordinance no. 39/2005.
- *3)** Government Ordinance no. 39/2003 was repealed through Government Ordinance no. 92/2003.
- *4)** Government Emergency Ordinance no. 102/1999 was repealed through Law no. 448/2006.

***5)** Government Emergency Ordinance no. 97/2000 was repealed through Government Emergency Ordinance no. 99/2006.

***6)** Government Emergency Ordinance no. 28/2002 was repealed through Law no. 297/2004.

NOTE:

1. We reproduce hereinbelow the provisions under art. II, art. II¹, art. III and art. V in Government Emergency Ordinance no. 138/2004 (#M12), as subsequently amended.

"ART. II

In the case of imported motor vehicles or SUVs, including used ones, which are introduced in the country pursuant to leasing agreements started after the date of entry into force of the present emergency ordinance, the base of taxation for excises is the entry value owed at the time of conclusion of the import operation to which the amount of customs duties and other special fees is added, as applicable."

"ART. II¹

The advances collected for deliveries of live animals are applied the fiscal regime related to value-added tax in force on the date of collection of the advance."

"ART. III*)

(1) By way of derogation from the provisions under art. 4 par. (2) in Law no. 571/2003 on the Fiscal Code, the provisions of the present emergency ordinance shall enter into force as of January 1st, 2005, with the following exceptions:

a) as of May 1st, 2005: letter a) under art. 42; par. (2) under art. 43; letter k) of par. (4) under art. 55; art. 76; art. 77;

b) as of June 1st, 2005: letter g) under art. 41; letter g) under art. 42; letter a) of par. (2) under art. 65; par. (1) of art. 66; par. (4) and (4¹) of art. 66; par. (2) of art. 67; letter a), a¹), a²), a³), e), e¹) and g) of par. (3) under art. 67; par. (4) and (5) under art. 67; art. 77¹ - 77³; par. (3¹) under art. 83; letter b) under par. (4) of art. 83;

c) *** Repealed

(2) *** Repealed

(3) *** Repealed

(4) *** Repealed

(5) The tax rate of 16% is applied as of January 1st, 2006 for the incomes obtained by non-resident physical persons and legal persons provided under art. 115, with the exception of the income obtained from gambling for which the tax rate of 20% is preserved."

*) Art. III in Government Emergency Ordinance no. 138/2004 was amended through art. I point 39 in Law no. 163/2005.

The Constitutional Court, through Decision no. 568/2005, established that the provisions under art. I point 39 in Law no. 163/2005 for approval of Government Emergency Ordinance no. 138/2004 on the amendment and supplementation of Law no. 571/2003 on the Fiscal Code, regarding the provisions under art. III par. (1) letter a) and b) in Government Emergency Ordinance no. 138/2004, are not constitutional, because they breach the provisions of art. 78 in the Constitution.

Art. III in Government Emergency Ordinance no. 138/2004 was subsequently amended through art. VI point 5 in Law no. 343/2006.

"ART. V

In order to reduce tax evasion in the field of excisable products subject to marking, the authorized warehouse-keepers shall use for marking only banderols and stamps with series and number. The term and procedure of application of the new marking models, as well as the regime of the stock of markings valid on the date of entry into force of the present emergency ordinance shall be established through order of the minister of public finance, which shall be published in the Official Gazette of Romania, Part I."

2. We reproduce hereinbelow the provisions under art. II in Law no. 343/2006.

"ART. II

The provisions under par. (15) of art. 161 in Law no. 571/2003 on the Fiscal Code, as subsequently amended and supplemented, as well as those brought through the present law, shall not apply if the validity of the agreements with payment in installments and/or of leasing agreements is extended after accession date through addenda concluded after the date of publication in the Official Gazette of Romania, Part I, of the provisions of the present law."

3. We reproduce hereinbelow the provisions under art. II in Government Emergency Ordinance no. 200/2008.

"ART. II

Exemption from tax on reinvested dividends

(1) Dividends reinvested as of 2009 for purpose of preserving and creating new jobs for the development of the activity of Romanian legal persons distributors of dividends, as per the object of activity thereof registered with the National Trade Register Office, are exempt from payment of the tax on dividends.

(2) Are exempt from payment of the tax on dividends the dividends invested in the share capital of another Romanian legal person for purpose of creation of new jobs for development of the activity thereof, as per the object of activity registered with the National Trade Register Office.

(3) The enforcement procedure of the provisions under par. (1) and (2) shall be approved through order of the minister of economy and finance and of the chairman of the National Agency of Fiscal Administration."

4. We reproduce hereinbelow the provisions under art. III par. (4) and (5), art. V, as well as of the mention regarding the transposition of the Community Norms from Government Emergency Ordinance no. 109/2009.

"(4) By way of exception from the provisions under par. (3), until December 31st, 2010 the movements of excisable products under a suspension regime to other Member States which have not adopted the computerized system as per art. 21-27 in Directive 2008/118/EC performed as per the procedure provided under art. 186-191^{^1} in chapter I of title VII "Excises and other special taxes" in Law no. 571/2003, as subsequently amended and supplemented, are admitted.

(5) By way of exception from the provisions under par. (3), the movements of excisable products which were not started before April 1st, 2010 are performed and concluded as per

the procedure provided under art. 186-191¹ in chapter I of title VII "Excises and other special taxes" in Law no. 571/2003, as subsequently amended and supplemented."

"ART. V

The declaration, establishment and payment of the tax on the income obtained by physical persons before January 1st, 2010 shall be made according to the legislation in force until that date."

"The present emergency ordinance transposes into the national legislation Directive 2008/8/EC of February 12th, 2008 of amendment of Directive 2006/112/EC with respect to the place of supply of the services, published in the Official Journal of the European Union, series L, no. 44 of February 20, 2008, Directive 2008/9/EC of the Council of February 12th, 2008 of establishment of the detailed norms regarding the reimbursement of the value-added tax, provided in Directive 2006/112/EC, to taxable persons established in another Member State than the Member State of reimbursement, published in the Official Journal of the European Union, series L, no. 44 of February 20th, 2008, Directive 2008/117/EC of the Council of December 16th, 2008 of amendment of Directive 2006/112/EC on the common system of the value-added tax, in order to fight fiscal fraud related to intra-Community operations, published in the Official Journal of the European Union, series L no. 14 of January 20th, 2009, Directive 2008/118/EC of the Council of December 16th, 2008 on the general regime of excises and repealing Directive no. 92/12/EEC, published in the Official Journal of the European Union, series L, no. 9 of January 14th, 2009, Directive 92/83/EEC of the Council of October 19th, 1992 on the harmonization of the structures of excises for alcohol and alcoholic beverages and Directive 92/84/EEC of the Council of October 19th, 1992 on the approximation of the rates of excises on alcohol and alcoholic beverages, published in the Official Journal of the European Union, series L, no. 316 of October 31st, 1992, Directive 92/79/EEC of the Council of October 19th, 1992 on the approximation of taxes for cigarettes and Directive 92/80/EEC of the Council of October 19th, 1992 on the approximation of the taxes on tobacco products, other than for cigarettes, published in the Official Journal of the European Union, series L, no. 316 of October 31st, 1992, amended through Directive 2002/10/EC of the Council of February 12th, 2002 of amendment of Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excises applied to tobacco products, published in the Official Journal of the European Union, series L, no. 46 of February 16th, 2002, Directive 95/59/EC of the Council of November 27th, 1995 on other taxes than the turnover taxes which affect the consumption of tobacco products, published in the Official Journal of the European Union, series L, no. 291 of December 6th, 1995, amended through Directive 2002/10/EC published in the Official Journal of the European Union series L no. 46 of February 16th, 2002, Directive 2003/96/EC of the Council of October 27th, 2003 on the restructuring of the Community framework of taxation of mineral oils and electricity, published in the Official Journal of the European Union series L, no. 283 of October 31st, 2003."

5. We reproduce below the provisions under art. II in Government Emergency Ordinance no. 22/2010.

"ART. II

By way of exception from the provisions under art. 4 par. (2) in Law no. 571/2003 on the Fiscal Code, as subsequently amended and supplemented, the provisions of the present emergency ordinance apply to determine the profit tax as of 2010."

6. We reproduce below the provisions under art. II – IV in Government Emergency Ordinance no. 54/2010, as subsequently amended and supplemented.

"ART. II

(1) *** Repealed

(2) The taxable persons and non-taxable legal persons registered as payers of value-added tax as per art. 153 and 153¹ in Law no. 571/2003, as subsequently amended and supplemented, who intend to carry out after August 1st, 2010 intra-Community operations of the nature of those provided under art. 158² par. (1) in Law no. 571/2003, as subsequently amended and supplemented, must request to the competent fiscal bodies to be registered in the Register of intra-Community operators, as per the provisions under art. 158² in Law no. 571/2003, as subsequently amended and supplemented.

(3) In the case of approval by the competent fiscal body of the requests submitted before August 1st, 2010 by the persons provided under par. (2), the date of registration in the Register of intra-Community operators will be the date of August 1st, 2010. In case of approval by the competent fiscal body of the requests submitted after August 1st, 2010 by the persons provided under par. (2) the date of registration in the Register of intra-Community operators shall be the date of communication of the decision under the conditions provided by Government Ordinance no. 92/2003 on the Code of Fiscal Procedure, republished, as subsequently amended and supplemented. The requests shall be settled within the term and under the conditions provided by art. 158² in Law no. 571/2003, as subsequently amended and supplemented.

(4) As of August 1st, 2010, for purposes of exchange of information in the field of value-added tax with the Member States of the European Union, the information in the Register of intra-Community operators shall be used."

"ART. III

The requests for registration in the Register of intra-Community operators shall be submitted to the competent fiscal bodies as of the date of publication of the present emergency ordinance."

"ART. IV

(1) The provisions under art. I points 4, 21 and 22 shall be applied as of July 1st, 2010.

(2) The authorizations held by authorized warehouse-keepers for fiscal warehouses of storage of excisable products, with the exception of the situations provided under art. I point 5, shall cease validity on September 1st, 2010.

(3) Warehouse-keepers authorized for production of mineral oils and warehouse-keepers authorized for production of cigarettes, including affiliates thereof provided under art. I point 5, who on the date of entry into force of the present emergency ordinance have more than 8 fiscal warehouses of storage of mineral oils and more than two fiscal warehouses of storage of cigarettes, shall be bound to communicate to the Commission for authorization of operators of products subject to excises the list of authorized fiscal warehouses of storage, which can be at most 8 and 2, respectively, for which they seek reauthorization, within a term of 10 business days as of the entry into force of the present ordinance.

(4) 48 hours after the entry into force of the provisions of the present emergency ordinance the movement of excisable products under a suspension regime to fiscal warehouses of storage is forbidden, with the exception of the cases provided under art. I point 5.

(5) Authorized warehouse-keepers who on the date of entry into force of the present emergency ordinance have valid authorizations which have exceeded the period of 3 years as of the starting date of validity of the authorization in case of large and medium taxpayers established as per the regulations in force and, respectively, of one year for the other cases, and who want to continue their activity as authorized warehouse-keeper, shall be bound to request reauthorization on or before August 31st, 2010, under the conditions provided by the Methodological norms of enforcement of Law no. 571/2003 on the Fiscal Code, approved through Government Decision no. 44/2004, as subsequently amended and supplemented.

(6) Authorized warehouse-keepers who hold valid authorizations on the date of entry into force of the present emergency ordinance the validity of which until August 31st, 2010 does not exceed 3 years for large and medium taxpayers and one year for small taxpayers as of the starting date of the authorization's validity, shall be bound to observe the provisions under art. I points 13, 15 and 17 on or before August 31st, 2010.

(7) The failure to observe the provisions under par. (5) and (6) leads to the revocation of the fiscal warehouse authorizations."

7. We reproduce hereinbelow the provisions under art. II and art. III in Government Emergency Ordinance no. 58/2010, as subsequently amended.

"ART. II

The following rules shall apply to the computation of the net earnings and the income tax corresponding for the transfer of securities, other than quota shares and movable securities for closed companies in 2010:

1. For the period between January 1st, 2010 and June 30th, 2010, the net earnings/net loss corresponding to this period shall be determined according to the holding period and shall be assimilated to the net annual earnings/net annual loss. The tax is determined by applying the taxation rates of 1% and 16%, respectively, on the net earnings corresponding to the period and assimilated to the net annual earnings.

2. The net loss corresponding to the period between January 1st, 2010 and June 30th, 2010 assimilated to the net annual loss is compensated by the net earnings assimilated to the net annual earnings corresponding to the period July 1st, 2010 and December 31st, 2010. If loss results after the compensation, it shall be reported only over the net annual earnings corresponding to 2011.

3. For the period July 1st, 2010 and December 31st, 2010 the net earnings/net loss corresponding to this period shall be determined and it shall be assimilated to the net annual earnings/net annual loss.

The tax corresponding to the period shall be determined by applying the rate of 16% to the net earnings of the period assimilated to net annual earnings, and minus the net loss corresponding to the period January 1st, 2010 and June 30th, 2010.

The net loss corresponding to the period July 1st, 2010 - December 31st, 2010 shall be assimilated to the net annual loss and shall be reported as per the provisions under art. 80^{^1} par. (2) and (3)."

"ART. III*)

(1) Any professional incomes, other than salaries, shall be applied the income tax rate.

(2) In the public pensions system and the system of unemployment insurance, *professional incomes*, other than salaries, for purposes of the present emergency ordinance, means those incomes obtained from copyrights and related rights and defined under art. 7 par. (1)

point 13¹ in Law no. 571/2003 on the Fiscal Code, as subsequently amended and supplemented, and/or incomes resulting from professional activities carried out based on agreements/conventions concluded as per the Civil Code**), as well as civil agreements and collaboration agreements concluded pursuant to the provisions under art. 38 par. (6) in Law no. 96/2006 on the Status of deputies and senators, republished, as subsequently amended and supplemented, and art. 18, respectively, in Law no. 53/1991 on allowances and other rights of senators and deputies, as well as the salaries of the staff in the apparatus of the Parliament of Romania, republished, as subsequently amended and supplemented. For these incomes individual social insurance and unemployment insurance contributions are owed.

(3) Physical persons who obtain professional incomes for which, as per the present emergency ordinance, the individual contribution for social insurance and the individual contribution for unemployment insurance are owed and paid shall be deemed mandatorily insured by operation of law in the system of public pensions and other social insurance rights, as well as in the system of unemployment insurance and shall benefit from the provisions stipulated by Law no. 19/2000 ^{***}) on the system public pensions and other social insurance rights, as subsequently amended and supplemented, as well as from unemployment allowance as per the provisions of Law no. 76/2002 on the system of unemployment insurance and stimulation of employment, as subsequently amended and supplemented.

(4) The provisions under par. (3) regarding the status of mandatorily insured by operation of law in the system of unemployment insurance does not apply to the persons for whom it is provided on the date of entry into force of the present emergency ordinance, as per Law no. 76/2002, as subsequently amended and supplemented, that insurance in the system of unemployment insurance is optional and who have the status of insured in this system pursuant to an unemployment insurance agreement, except if said persons waive the insurance agreement.

(5) The persons insured in other systems not integrated with the system of public pensions and other social insurance rights, and the persons who are pensioners shall not fall under the provisions of par. (2).

(6) The persons who obtain on occasions, apart from salary incomes, professional incomes as defined under art. 7 par. (1) point 13¹ in Law no. 571/2003 on the Fiscal Code, as subsequently amended and supplemented, shall not owe individual contributions for these professional incomes.

(7) The persons who obtain on occasions exclusively professional incomes as defined under art. 7 par. (1) point 13¹ in Law no. 571/2003, as subsequently amended and supplemented, shall owe the contributions provided under par. (2). In this situation, the annual base of calculation cannot exceed 5 times the average gross salary used to substantiate the budget of state social insurance and approved through the Law on the state social insurance budget.

(8) The persons who regularly obtain, apart from salary incomes, other professional incomes as defined under art. 7 par. (1) point 13¹ in Law no. 571/2003, as subsequently amended and supplemented, shall owe individual contributions for these professional incomes as well, according to the base of calculation provided under par. (17).

(9) The persons who regularly obtain exclusively professional incomes as defined under art.7 par. (1) point 13¹ in Law no.571/2003, as subsequently amended and supplemented, shall owe the contributions provided under par. (2), according to the base of calculation provided under par. (17).

(10) For purposes of par. (6) and (7), incomes obtained on occasions means those incomes obtained as a result of carrying out an activity sporadically, not regularly.

(11) The obligation to declare, calculate, withhold and pay the individual contributions of social insurance and unemployment insurance corresponding to the incomes provided under par. (2) belongs to the payer of the incomes.

(12) The provisions of Law no. 19.2000***), as subsequently amended and supplemented, and those of Law no. 76/2002, as subsequently amended and supplemented, related to the obligations of the employers with respect to declaring, calculating, withholding and paying the contributions to social insurance, and those to unemployment insurance, as well as the related sanctions for failure to observe these obligations shall also apply to the obligation provided under par. (11).

(13) Income payers, in order to declare the nominal records of the persons who obtain professional incomes, other than salaries, and the individual contributions to social insurance and unemployment insurance corresponding to those incomes, are bound to submit on a monthly basis, on or before the 25th of the month following that in which the professional incomes were paid, the declaration regarding the payment obligations of the social contributions and the nominal records of the insured as provided by art. 296[^]19 in Law no. 571/2003, as subsequently amended and supplemented.

(14) *** Repealed

(15) Income payers are not bound to declare, compute, withhold and pay the individual unemployment contributions and social insurance contributions corresponding to the professional incomes they paid to the persons provided under par. (4) who are insured pursuant to an unemployment insurance agreement, as well as the persons provided under par. (5), as applicable.

(16) The persons provided under par. (3) are bound to prove to the income payer that they are part of the category of persons provided under par. (4) who are insured pursuant to an unemployment insurance agreement, as well as the category provided under par. (5).

(17) The monthly base of calculation for which the individual social insurance contributions and the unemployment insurance contributions are owed is:

a) the gross income reduced with the rate of expenses provided under art. 50 par. (1) letter a) or, as applicable, under art. 50 par. (2) letter a) in Law no. 571/2003, as subsequently amended and supplemented, for the incomes from copyrights and related rights;

b) the gross income, for the incomes from activities carried out pursuant to agreements/conventions concluded as per the Civil Code **).

(18) The monthly base of computation for which the individual social insurance contributions and the unemployment insurance contributions are owed cannot exceed during one calendar month the equivalent of 5 times the average gross salary used to substantiate the budget of state social insurance and approved through the Law on the budget of state social insurance.

(19) The rates of the individual contributions provided under par. (2) are those established by the law on the budget of state social insurance and for the individual contribution to unemployment insurance.

(20) The persons who obtain the incomes provided under par. (2) owe the individual contribution of social insurance even if they are in the situation mentioned under art. 5 par. (1) point I and II in Law no. 19/2000***), as subsequently amended and supplemented.

(21) The persons who obtain the incomes provided under par. (2) owe the individual unemployment insurance contribution even if they fall under the provisions under art. 19 in Law no. 76/2002, as subsequently amended and supplemented.

(22) The individual social insurance contributions and the unemployment insurance contributions are transferred into separate accounts established for this purpose and communicated by the National Pensions House and Other Social Insurance Rights and the National Employment Agency.

(23) For the periods when the individual social insurance contributions were owed and paid, the number of monthly points obtained in the public pensions system is calculated as per art. 78 in Law no. 19/2000***), as subsequently amended and supplemented, to which the coefficient resulting as ratio between the rate of individual social insurance contribution and the rate of social insurance contribution approved for jobs under normal work conditions is applied.

(24) For the persons who obtain professional incomes as those provided under par. (2), the vesting period to the public pensions system is made up of all periods for which the individual social insurance contribution was owed and paid, as per the present emergency ordinance.

(25) The periods when the individual unemployment contributions were owed as per the provisions of the present article represent a vesting period in the unemployment insurance system.

(26) The professional incomes provided under par. (2) for which the individual unemployment contributions are owed and paid are taken into account when establishing the amount of unemployment allowance, as per the legal provisions, through the application of a coefficient that is the result of a ratio between the rate of individual contribution to unemployment insurance and the rate of contribution owed to the unemployment insurance budget, as per the legal provisions, by the persons insured based on the unemployment insurance agreement.

(27) The amounts representing contributions paid in excess of the fiscal liability, those paid as a result of a computation error, as well as those paid as a result of the erroneous application of the legal provisions are returned or compensated, at the insured's request, as per the provisions of Government Ordinance no. 92/2003 on the Fiscal Procedure Code, republished, as subsequently amended and supplemented.

(28) To the extent the application of the present provisions imposes the issuance of instructions with respect to the individual social insurance contribution, or the individual unemployment insurance contribution, such instructions shall be issued through common order of the minister of labor, family and social protection and of the minister of public finance."

***) 7.1. Art. III** par. (13) in Government Emergency Ordinance no. 58/2010 is reproduced as it was amended through art. II point 2 in Government Emergency Ordinance no. 117/2010. According to art. XVI in Government Emergency Ordinance no. 117/2010, the provisions of par. (13) under art. III in Government Emergency Ordinance no. 58/2010, amended as per art. II point 2 in Government Emergency Ordinance no. 117/2010, shall be applied starting with the incomes paid in January 2011.

7.2. Art. III par. (14) in Government Emergency Ordinance no. 58/2010 was repealed through art. VII letter d) in Government Emergency Ordinance no. 117/2010. According to art. XVII in Government Emergency Ordinance no. 117/2010, the provisions of art. VII in Government Emergency Ordinance no. 117/2010 shall not apply for the computation, payment and declaration of the mandatory social contributions and of the contribution to the Guarantee fund for payment of salary debts corresponding to the incomes prior to January 2011.

7.3. According to art. III in Government Emergency Ordinance no. 125/2011, as of July 1st, 2012 art III in Government Emergency Ordinance no. 58/2010 shall be repealed.

****)** The old Civil Code was partially repealed. See Law no. 287/2009 on the Civil Code, republished.

*****)** Law no. 19/2000 was repealed. See Law no. 263/2010.

8. We reproduce hereinbelow the provisions of art. III in Government Emergency Ordinance no. 82/2010.

"ART. III

(1) The provisions of the present emergency ordinance apply to the incomes of the type of those provided under art. II in the present emergency ordinance which are paid after the date of entry into force hereof.

(2) The individual social insurance contributions and unemployment insurance contributions paid before the date of entry into force of the present emergency ordinance, pursuant to the provisions in Government Emergency Ordinance no. 58/2010 on the amendment and supplementation of Law no. 571/2003 on the Fiscal Code and other financial-fiscal measures and of the Methodological norms of enforcement of the provisions under art. III in Government Emergency Ordinance no. 58/2010 on the amendment and supplementation of Law no. 571/2003 on the Fiscal Code and other financial-fiscal measures, approved through Government Decision no. 791/2010, are considered paid liabilities and are no longer subject to the present emergency ordinance.

(3) The period for which the persons provided under art. III in Government Emergency Ordinance no. 58/2010 owed and paid the individual social insurance contributions and the unemployment insurance contributions, as per the legal provisions in force until the date of entry into force of the present emergency ordinance, represent a vesting period to these insurance systems.

(4) On the date of entry into force of the present emergency ordinance appendix no.2 to Government Decision no. 791/2010 on the amendment and supplementation of the Methodological norms of enforcement of Law no. 571/2010 on the Fiscal Code, approved through Government Decision no. 44/2004, as well as on the approval of the Methodological norms of enforcement of the provisions under art. III in Government Emergency Ordinance no. 58/2010 for the amendment and supplementation of Law no. 571/2003 on the Fiscal Code and other financial and fiscal measures, published in the Official Gazette of Romania, part I, no. 542 of August 3rd, 2010, shall be repealed. "

9. We reproduce hereinbelow the provisions of the mention regarding the transposition of Community norms from Government Emergency Ordinance no. 117/2010.

"The present emergency ordinance transposes into the national legislation:

- art. 3 in Directive 2008/8/EC of the Council of February 12th, 2008 of amendment of Directive 2006/112/EC with respect to the place of provision of the services, published in the Official Journal of the European Union series L, no. 44 of February 20th, 2008;

- Directive 2009/162/EU of the Council of December 22nd, 2009 on the amendment of certain provisions of Directive 2006/112/EC on the common system of value-added tax, published in the Official Journal of the European Union series L no. 10 of January 15th, 2010;

- Directive 2010/23/EU of the Council of March 16, 2010 of amendment of Directive 2006/112/EC on the common system of value-added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain

services susceptible to fraud, published in the Official Journal of the European Union series L no. 72 of March 20th, 2010; and
- Directive 2010/12/EU of the Council of February 16th, 2010 amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excises applied on manufactured tobacco and Directive 2008/118/EC, published in the Official Journal of the European Union series L no. 50 of February 27th, 2010."

10. We reproduce hereinbelow the provisions of art. III and art. XI, as well as those of the mention regarding the transposition of Community Norms in Government Ordinance no. 30/2011 (**#M91**), as subsequently amended.

"ART. III*)

(1) Authorized warehouse-keepers who on January 1st, 2012 hold valid authorizations are bound to observe the provisions under art. 206^22 par. (3) letters h) and i), art. 206^23 par. (1) letter h), as well as art. 206^54 par. (4^1) in Law no. 571/2003 on the Fiscal Code, as subsequently amended and supplemented, on or before January 31st, 2012.

(2) The failure to observe the provisions under par. (1) causes the revocation of the fiscal warehouse authorizations."

*) According to art. VIII par. (2) in Government Emergency Ordinance no. 125/2011, the term of January 31st, 2012, inclusive, as provided under art. III par. (1) in Government Ordinance no. 30/2011, is to be postponed until February 29th, 2012, inclusive.

"ART. XI

(1) For the fiscal liabilities outstanding on August 31st, 2012, the delay penalties shall be annulled or reduced, as follows:

a) the delay penalties shall be annulled if the main liabilities and the penalties related thereto are extinguished through voluntary payment or compensation by December 31st, 2011;

b) the delay penalties shall be reduced by 50% if the main liabilities and the penalties related thereto are extinguished through voluntary payment or compensation by June 30th, 2012.

(2) For the interests owed until the date of extinguishment which are established through decision communicated after such date, the condition shall be considered fulfilled if the interests are extinguished until the payment term provided under art. 111 par. (2) in Government Ordinance no. 92/2003 on the Fiscal Procedure Code, republished, as subsequently amended and supplemented.

(3) In the case provided under par. (1) the fiscal administrative documents or enforceable titles establishing accessory fiscal liabilities corresponding to main fiscal debts extinguished as per par. (1) shall be cancelled, either in total or in part, even if means of appeal were exercised against them or not.

(4) The provisions under par. (1) – (3) shall correspondingly apply for a rate of 50% of delay penalties corresponding to the fiscal liabilities extinguished through payment or compensation."

*

"The present ordinance transposes into the national legislation the provisions under art. 2 par. (2) in Directive 2011/64/EU of the Council of June 21st, 2011 on the structure and

rates of excises applied to manufacture tobacco, published in the Official Journal of the European Union series L no. 176 of July 5th, 2011."

11. We reproduce hereinbelow the provisions under art. V in Government Emergency Ordinance no. 125/2011.

"ART. V

(1) As of July 1st, 2012, the competence of administration of mandatory social contributions owed by the physical persons provided under chapters II and III in title IX² of the Fiscal Code belongs to the National Agency of Fiscal Administration.

(2) The competence of administration of the social contributions owed by the physical persons provided under par. (1) for the incomes corresponding to the fiscal periods prior to January 1st, 2012, as well as for the period January 1st – June 30th, 2012 as social contributions related to the year 2012 and, at the same time, for the settlement of challenges against the administrative acts through which the establishment was made belongs to the social insurance houses, as per the specific legislation applicable to each period.

(3) By way of exception from the provisions under par. (2), in case of performance of the fiscal inspection for periods prior to January 1st, 2012, the establishment of the social contributions, as well as the settlement of the challenges against the administrative acts through which such establishment was made belong to the fiscal bodies provided under par. (1).

(4) As of July 1st, 2012, the social insurance houses deliver to the fiscal bodies subordinated to the National Agency of Fiscal Administration, for collection purposes, the receivables representing social contributions owed by the physical persons provided under chapters II and III in title IX² of the Fiscal Code, which were established and not paid by June 30th, 2012. The delivery-takeover shall be made until September 30th, 2012 on debt securities and due dates, based on the delivery-receipt protocol and the following documents:

- a) deeds which individualize the debts owed and not paid until the date of delivery-takeover and which represent enforceable titles;
- b) the situation of the balances of the contributions established until June 30th, 2012 and not collected by that same date;
- c) a copy of the documents which individualize the anticipated payments established for 2012;
- d) any other information available, which is necessary in order to monitor and check the amounts owed.

(5) The delivery-receipt procedure of the documents and information provided under par. (4) shall be approved through common order of the minister of public finance, the minister of labor, family and social protection, and the minister of health, within 30 days as of the date of publication of the present emergency ordinance in the Official Gazette of Romania, Part I.

(6) The amounts representing the contributions provided under par. (1), including the interests, delay penalties or delay increases for which the right to establish and/or the right to claim forced execution reached the statute of limitations on the date of takeover thereof for administration purposes by the National Agency of Fiscal Administration shall remain under the liability of the social insurance houses.

(7) After the mandatory social contributions owed by the physical persons as per par. (2) are established, the social insurance houses shall send to the National Agency of Fiscal Administration a copy of the documents which individualize the social contributions thus established, at the latest on June 30th, 2013.

(8) As of July 1st, 2012, the social contributions owed by the physical persons provided under chapters II and III in title IX² of the Fiscal Code shall be paid to the units of the State Treasury attached to the fiscal bodies competent to manage the taxpayers in question, into separate budget accounts coded with the fiscal identification number of the taxpayers.

(9) For the social contributions provided under par. (1), the forced execution procedures in progress on July 1st, 2012 shall be continued by the National Agency of Fiscal Administration which is subrogated to the rights and obligations of the social insurance houses, and the acts previously fulfilled shall remain valid.

(10) For the litigations whose object is challenges against forced execution or against acts which order or fulfill the precautionary measures ordered by the court, as well as for the litigations related to insolvency procedures, which correspond to the receivables provided under par. (4), the National Agency of Fiscal Administration is subrogated to all the trial rights and obligations of the social insurance houses and acquires the locus standi thereof as of July 1st, 2012 in all trials and claims pending before the courts of law, no matter the trial stage."