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LEGAL UPDATE

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PRIVATISATION

On February 2nd, 2003 came into force the Government Ordinance No. 40/2003 amending the Government Ordinance No. 25/2002 on the post-privatisation control.

The amendments mainly refer to the sources of carrying out the investments, the fulfilment by third persons of the obligations undertaken, the information of the Authority for Privatisation and Management of State Ownership ("APAPS") on the fulfilment of the obligations, the amounts due by the investors as penalties, etc.

Financial sources for carrying on the investments undertaken by the buyers of the shares. Fulfilment of the obligation by the third parties

The financial sources for carrying on the investments may consist of: amounts transferred by the buyer directly from the account opened on his name, the dividends due to it and placed at the company's disposal with that end in view, transfer of technology, know-how, licences, patents, amounts granted by third persons (shareholders, associates or buyer's affiliates or by companies within the same group, third persons as to the company granting these amounts according to a authentic act concluded with the buyer).

Compared to the previous text which imposed to pay the amounts for the investments in cash, it is to be noted that it is possible to make contributions consisting of intellectual and industrial property rights.

The new Ordinance also allows the third persons to fulfil the obligations undertaken according to the privatisation agreement. This is possible by concluding an **addendum** to the agreement establishing either:

a. an imperfect delegation by compelling the third party jointly with the main debtor; or
b. a novation with changing of debtor.

The third party, who subsequently becomes debtor jointly with the main debtor, becomes **jointly liable** with the buyer for fulfilling the agreement's obligations, including the clause covering the penalties resulting from non-observance of some obligations relating to the periods previous to the addendum.

Notice addressed to APAPS informing it on the fulfilment of the obligations undertaken according to agreement

The evidence attesting the fulfilment of the obligation pertaining to the investments is represented by the certificate issued by the company's auditors, mentioning if:

a. the investments corresponds to the amount undertaken;
b. the book-keeping is performed according to the law;
c. the financial sources are those provided by the agreement or have another origin.

The evidence attesting the fulfilment of the environmental obligation shall be

accompanied by the confirmation issued by the relevant environmental authority.

Within maximum 30 days as from the settling day of the obligations undertaken, the buyer of the shares is compelled to inform APAPS in this respect and to submit a report accompanied by the evidence attesting the fulfilment of the obligations.

Application of penalties

The penalties and the delay penalties are not due if, until the deadline set for carrying on the investment, the related obligation has been fulfilled at the total amount undertaken, even if the intermediary settling days or the investment targets have not been observed. Otherwise, the penalties are due for the amount unpaid starting with the time limit set for carrying on the investments.

Granting new incentives

In case the buyers have overdue debts on the date of enforcement of the above mentioned Ordinance, they shall pay off the total price, the related interest and at least 40% of the related penalties by July 31, 2003 latest. They shall benefit from a payment incentive consisting of an exemption of 60% on the amount of the penalties due for delay in the payment of price.

TAXATION

In the Official Gazette of February 11, 2003 have been published the Methodological Norms for the enforcement of the Government Ordinance No. 7/2001 relating to the income tax (the „ Norms"), norms which are enforceable starting with January 1st, 2003.

The Norms detail and explain the calculation methodology and the taxation conditions. However, we have retained only certain relevant aspects provided by this enactment, mainly pertaining to: (i) the taxation of perquisites and usage for personal benefits of the material goods and rights relating to the carrying on of the activity; (ii) incomes resulting from dividends and interests and those obtained from the assignment of the ownership right over the securities and shares, as well as (iii) certain international tax aspects.

Taxation of perquisites and usage for personal benefits of the material goods and rights relating to the carrying on of the activity

According to the Norms, are considered as monetary gains and perquisites the benefits received by the tax payer from third parties or following a contractual relationship.

Upon setting the taxable income, the benefits received by the individual entity shall also be considered, such as:

- free use for the personal benefit of any type of car belonging to the company's assets;
- granting of food products, clothes, timbers, woods for heating, coal, electric power, thermal power etc.
- radio and TV subscriptions, season tickets for transportation, telephone subscriptions and cost of telephone calls, including telephone cards;

- travel permits for different means of transportation;
- leisure and therapeutic treatment tickets;
- gifts received on different occasions;
- equivalent value for use of a lodging house for the personal benefit and for related rates;
- accommodation and lodging granted in company's resort hotels;
- equivalent value of insurances paid by the legal entity or by other entity for its own employees, as well as for other beneficiaries, excepting the obligatory insurances according to the related laws in the matter.

Such benefits are subject to tax in the same manner as the income category in which it is included.

The incomes in kind and the perquisites received gratuitously are assessed at the market price prevailing in the place and at the moment when the benefit has been granted.

The assessment of the perquisites consisting of use of company's assets only for the personal benefit is performed as follows:

- the gratuitous use of car is assessed by applying 1.7%, per each month, on its recorded value;
- the gratuitous use of a lodging house is assessed based on the rental value which prevails for the dwelling spaces owned by the State. The related benefits (utilities, rates and maintenance expenses) and other similar benefits are assessed at their effective value;
- the gratuitous use of other assets than the car and the lodging house is assessed based on the total value of the expenses corresponding to each material goods per specific measure unit or at the level of the price which is applicable to third parties.

The use of company's assets meant to the use of the employees jointly joint, for the personal benefit, is assessed as follows:

- the cars are assessed according to the valuation rule applicable to the cars exclusively used for the personal benefit, and the advantage is ascertained proportional to the number of kilometres made for the personal benefit, justified by the travelling sheet.
- other material goods are assessed according to the valuation rule applicable to the material goods exclusively used for the personal benefit, the advantage being established proportional to the number of square meters used for the personal benefit or to the number of hours during which it was used for the personal benefit.

Following are not considered benefits:

- the use of a lodging house or the rent equivalent value in case the employees are granted a residence in the locality or the premises where the workplace is located and which suppose the permanent presence in that locality.
- the equivalent value of travelling expenses for the transport from the locality in which the employees are domiciled to the locality in which is situated their workplace, amounting to a monthly season ticket;
- the equivalent value of transportation season tickets for the employees whose

activity suppose the frequent travelling within the locality;
- expenses incurred by the employer for the employee's professional training or refresher courses in connexion with the activity carried on by the employee for the employer;
- price cuttings from which the clients individual entities may benefit;
- amounts diminishing the rates to be paid by the property owners/tenants, following the revenues obtained from the renting the common spaces of the property owners/tenants association;
- costs of telephone subscriptions and telephone calls made in order to fulfil the professional duties;
- equivalent value of use of company's car for personal benefit or of telephone offered to fulfil the professional duties, in case the employee pays up this amount.

Upon the assessment of the advantage relating to the use of company's car meant to the joint employ, for the personal benefit, placed at the employee's disposal, it is not considered the distance to/from home to the workplace, recorded in the travelling sheet.

Incomes resulting from dividends and interests

Following are considered incomes resulting from interest:
- the interests obtained from bonds;
- the interests obtained from term deposits, including deposit certificates;
- the amount received by the holder of participation titles in open-end investment funds, set as difference between the redemption price and the purchasing price;
- the amount received as interest for the loans granted;
- other incomes obtained from evidences of debt.

For the incomes resulting from interests, the tax is calculated, retained and transferred by the payers of such incomes, e.g.: banks, management companies and others.

For the incomes resulting from participation titles held in the open-end investment funds, the calculation basis is set as difference between the redemption price and the purchasing price

The redemption price is the price due to the investor while retiring from the fund and consists of the unit value of the net asset on the day preceding the submitting of the redemption application, out of which the redemption fees are deducted.

The subscription/purchasing price is the price paid by the investor, individual entity, and consists of the net asset unit value to which is added to the purchasing fees, as the case may be.

In case of incomes resulting from participation titles held in the open-end investment funds, is incumbent on management company to calculate, retain and transfer the related income tax.

For the incomes obtained as interests resulting from participation titles held in the closed-end investment funds, the obligation to calculate, retain and transfer the

dividend-related income tax is incumbent on:

- the investment company, in case a management agreement has not been concluded;
- the management company, in case the investment company has concluded a management agreement with the management company.

Incomes resulting from assignment of property right over securities and shares

The obligation to calculate, retain and transfer the tax in case of assignment of property right over the securities is incumbent on the financial investment services company.

In case of assignment of property right over the shares, if the acquirer of the shares is not a Romanian individual entity domiciled in Romania, the obligation to calculate, retain and transfer the tax is incumbent on the Romanian individual entity domiciled in Romania, who obtains the income.

Starting with January 1st, 2003, the income tax for the incomes resulting from sale-purchase of foreign currency forward operations, based on an agreement, is calculated by applying a tax quota of **1%** over the calculation basis, representing incomes obtained from favourable rate differences of such operations.

International tax aspects

The Norms detail the criteria under which an income is qualified as being obtained or not in Romania. Thus, the income is considered as being obtained in Romania if:

- the income payer has its headquarters or domicile on the Romanian territory, in case of interests paid to an individual entity by a bank located on the Romanian territory, as well as in case of wages paid to individual entities by an employer having its headquarters or domicile on the Romanian territory and other similar incomes;
- the assets generating incomes are located on the Romanian territory, in case of incomes resulting from letting real estates located on the Romanian territory and other similar incomes;
- the activity is carried out on the Romanian territory, in case of incomes resulting from wages earned following carrying on an dependent activity, paid from abroad, in case of incomes resulting from repair and maintenance works, technical assistance, market research, as well as from any other activities carried out, but paid from abroad.

As a general rule, **the Romanian individual entities domiciled in Romania** are subject to taxation in Romania for their incomes obtained in Romania or from abroad. The incomes obtained from abroad by Romanian individual entities domiciled in Romania shall be declared in Romania.

In case where the income obtained from abroad, the State in question has exercised the taxation right, the concerned persons has the right to deduct from the income tax due in Romania, the income tax paid abroad for the said income, according to the law.

The Romanian individual persons domiciled in Romania, who are carrying on paid work abroad and are remunerated for this paid

work by the Romanian employer, are subject to taxation in Romania for the incomes obtained from the remunerated activity carried on abroad.

In case that the concerned persons perform a remunerated activity abroad up to a period of 183 days during the related fiscal year, they are subject to taxation in the state in which the activity is carried on.

The incomes resulting from salaries, obtained by **Romanian individual entities who are not domiciled in Romania** or by **the foreign individual entities for the activity performed in Romania**, are subject to taxation as follows:

- if the person is present in Romania for a total period up to 183 days within any 12 months period starting or ending in the related calendar year, the incomes resulting from salaries are subject to taxation starting with the first day of his arrival, attested by the entry visa in Romania on the passport.
- if the person is present in Romania for less than 183 days within any 12 months period starting or ending in the related calendar year, but he is resident in a state with which Romania's Government has concluded a treaty or an agreement for avoiding the double taxation, the incomes resulting from salaries are subject to taxation abroad if the following conditions are cumulatively met:
  a. the wage-earner individual entity is residing in Romania for a period or for total periods which are not exceeding 183 days within a 12 calendar month period starting or ending in the related fiscal year;
  b. the wage is paid by an employer who is not a resident of Romania;
  c. the wage is not charged by a permanent headquarter or a fix basis that the employer has in Romania.

The foreign individual entities earning incomes from Romania and being resident of another contracting state with which Romania has concluded an agreement for avoiding the double taxation are subject to taxation in Romania, under the conditions of the law, in case the fiscal residence certificate is not submitted, for the incomes, other than those subject to taxation according to the law.

The foreign individual entities earning incomes from Romania and being resident of states with which Romania has not concluded agreement for avoiding the double taxation are subject to taxation under the same conditions and for the same income categories as above mentioned.